

Laws of the Non-Removable



**Mille Lacs Band of
Chippewa Indians**

Foreword

The Legislative Branch is pleased to provide an updated publication of the Laws of the Non-Removable Mille Lacs Band of Chippewa Indians. These statutes belong to the People and are the result of many years of hard work by dedicated individuals in collaboration with elected leaders. The lawmaking process is one of negotiation, review, rewrites, deliberation, and, yes, politics. But these statutes lay the foundation to govern independently and promote our sovereignty as a People.

The Legislative Branch is taking on the task of regular publication of statutes, routine notification to Band membership, and the creation of a Revisor's Office. Since the most recent publication of Band Statutes in 2006, one title has been repealed (Title 25), two titles have been adopted (Titles 26 and 27), and several titles have been amended by way of ordinance. Thus, Band Statutes are fluid in nature and will need constant review by Band members and elected leaders.

According to 4 MLBS § 18(e), only the Band's Solicitor General may "certify to the ordinances of Band government and codify said ordinances into Band Statutes." The Solicitor General has recently issued Certificates of Correctness for Titles 5, 6, 16, 18, 24, 26, and 27. As of November 9, 2020, the titles contained herein are the most current versions known to the Legislative Branch. As more laws are passed and Certificates of Correctness are issued, official titles will be uploaded to the Band's website.

We all have a duty to read and know these words, to disagree and second-guess, to recognize and abide by, to make ongoing changes, and to propose the creation of entirely new bodies of law to meet the times we live in. Thank you to all Legislative staff, past and present, who have been instrumental in the exercise of our tribal sovereignty. But the ultimate thank you is to the People of the Band from whom the Legislative Branch derives its power. We must never forget that the inherent power to make law comes only from the People.

Miigwech,



Sheldon Boyd
Speaker of the Assembly

November 9, 2020

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TITLE 1 – CIVIL RIGHTS CODE

Section

1. Freedom of Religion, Speech and Press; Right to Assemble and Petition.
2. Searches and Seizures.
3. Prohibition Against Double Jeopardy.
4. Self-Incrimination in Criminal Proceeding.
5. Expropriation of Private Property.
6. Individual Rights During Judicial Proceedings.
7. Bails, Fines and Penalties.
8. Equal Protection and Due Process of Law.
9. Bills of Attainder, Ex Post Facto Laws, and Laws Impairing Obligations of Contracts.
10. Rights to Trial by Jury.
11. Habeas Corpus.
12. Presumption of Innocence.
13. Protection for Cultural Values.
14. Fundamental Principles.
15. Compensation for Unlawful Taking of Band Lands.

Historical and Statutory Notes

The Preamble of Band Statute 1140-MLC-1 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of establishing basic human rights under law for the Band and all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.”

The Preamble of Ordinance 21-10, entitled “An ordinance amending 1 MLBSA sec. 1 to exclude all Tribal political campaign activity in all government building and government owned businesses,” provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 1 of Title 1 of the Mille Lacs Band Statutes Annotated to exclude political campaign activity in all government buildings and government owned businesses.”

Cross References

Band employees, civil rights, see 6 MLBS § 7.

Criminal procedure, rights of defendant, see 24 MLBS § 4004.

Juvenile delinquency, rights of accused, see 24 MLBS § 4302. Rights of members, see Const. Art. 13.

§ 1. Freedom of Religion, Speech and Press; Right to Assemble and Petition.

- (a) The Band Assembly for the Non-Removable Mille Lacs Band of Chippewa Indians in exercising the powers of self-government shall make no law which prohibits the

free exercise of religion or abridges the freedom of speech or of the press and to petition for a redress of grievances.

- (b) The Band Assembly for the Non-Removable Mille Lacs Band of Chippewa Indians in exercising the powers of self-government shall make no law which prohibits the rights of the people to peaceably assemble, however, no Tribal political campaign activity shall be permitted in any government building or any government owned business except for the purpose of a government sponsored candidate forum, where all candidates for band elected office are given the option to participate.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 1.
Band Ordinance 21-10, § 1.

Cross References

Nay-Ah-Shing School, sectarian materials or teaching, *see* 9 MLBS § 24.

§ 2. Searches and Seizures.

All persons within the territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians have the right to be secure in their persons, houses, papers and effects against unreasonable search and seizures. Any warrant shall be issued by a justice of the Court of Central Jurisdiction and shall be founded upon probable cause supported by oath or affirmation, shall describe with particularity the place to be searched and the person or thing to be seized.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1. § 2.

Cross References

Historical preservation, civil penalties, *see* 10 MLBS § 603.

Juvenile justice, warrants, *see* 8 MLBS § 102.

Motor vehicles, seizure and confiscation of certain substances and vehicles in which they are found, *see* 19 MLBS § 503.

Natural Resource Officers, searches, inspections and seizures, *see* 11 MLBS §§ 2606 to 2608.

Peaceful possession of property, *see* 24 MLBS § 203.

Searches and seizures, criminal procedure, *see* 24 MLBS § 4107 et seq.

Trespass, seizure of vehicles, equipment or goods, *see* 21 MLBS § 207.

Watercraft, seizure and confiscation of certain substances and vessels in which they are found, *see* 20 MLBS § 405.

§ 3. Prohibition Against Double Jeopardy.

No person shall be subjected, for the same offense, to be twice put in jeopardy by the Court of Central Jurisdiction for the commission of a crime within the territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 3.

§ 4. Self-incrimination in Criminal Proceeding.

No person shall be compelled in any criminal case in the Court of Central Jurisdiction to be a witness against himself.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 4.

Cross References

Basic rights of children taken into custody, *see* 8 MLBS § 105.

Gasoline and petroleum products excise tax, immunity from prosecution based on testimony, *see* 22 MLBS § 311.

Notification of rights at time of arrest, *see* 24 MLBS § 4106.

Sales and use taxes, immunity from prosecution for testimony, *see* 22 MLBS § 512.

Tobacco products excise taxes, immunity from prosecution based on testimony, *see* 22 MLBS § 218.

§ 5. Expropriation of Private Property.

The Non-Removable Mille Lacs Band of Chippewa Indians shall not confiscate any private property for public use without just compensation.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 5.

§ 6. Individual Rights During Judicial Proceedings.

All persons in any criminal or civil proceeding of the Non-Removable Mille Lacs Band of Chippewa Indians shall be accorded the right to a speedy and public trial, be informed of the nature and cause of the accusation, be confronted with the witnesses against him, have a compulsory process of obtaining witnesses in his or her favor, and at his or her own expense, to have the assistance of counsel for his or her defense.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 6.

Cross References

Basic rights of children taken into custody, *see* 8 MLBS § 105.

Child care staff, abuse or neglect of children, *see* 8 MLBS § 1207.

Human Resources Division cases, informing minor or parents of rights, *see* 8 MLBS § 11.

Indian employment rights hearings, *see* 18 MLBS § 423.

Legal responsibilities of Solicitor General in capacity of prosecutor, *see* 4 MLBS § 20.

Notification of rights at time of arrest, *see* 24 MLBS § 4106.

§ 7. Bails, Fines and Penalties.

The Court of Central Jurisdiction in and for the Non-Removable Mille Lacs Bands of Chippewa Indians, in the exercise of judicial authority, shall issue no order which establishes excessive bail, imposes excessive fines, inflicts cruel and unusual punishments and in no event imposes for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of \$5,000.00 or both.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 8.

Cross References

Bail, *see* 24 MLBS §§ 4156, 4157.

Sentence, *see* 24 MLBS § 4251 et seq.

§ 8. Equal Protection and Due Process of Law.

All persons within the territorial jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians shall be accorded the equal protection of the Band's laws and no person shall be deprived of liberty or property without due process of law.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 8.

Cross References

Basic rights of children taken into custody, *see* 8 MLBS § 105.

Child care staff, abuse or neglect of children, *see* 8 MLBS § 1207.

Creditors' remedies, due process, *see* 24 MLBS § 3301.
Deputy Registrar of Motor Vehicles, removal, *see* 19 MLBS § 10.
Historical preservation, civil penalties, *see* 10 MLBS § 603.
Human Resources Division cases, informing minor or parents of rights, *see* 8 MLBS § 11.
Indian employment rights hearings, *see* 18 MLBS § 423.
Justices or Judges, removal or discipline, *see* 5 MLBS § 11.
Peaceful possession of property, *see* 24 MLBS § 203.
Solicitor General, legal responsibilities in capacity of prosecutor, *see* 4 MLBS § 20.

§ 9. Bills of Attainder, Ex Post Facto Laws, and Laws Impairing Obligations of Contracts.

The Band Assembly in and for the Non-Removable Mille Lacs Band of Chippewa Indians, shall pass no bill of attainder or approve any ex post facto law, or any law impairing the obligations of contracts. A bill of attainder is a law which imposes non-judicial punishment on a specifically identified individual without affording him or her a judicial trial.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 9.

§ 10. Rights to Trial by Jury.

All persons accused of an offense within the territorial jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians which is punishable by imprisonment of not more than one year, shall have the right, upon request, to a trial by jury of not less than six persons.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 10.

Cross References

Criminal procedure, jury trial *see* 24 MLBS § 4201.
Trial by jury, generally, *see* 24 MLBS § 2014.

§ 11. Habeas Corpus.

The privilege of the writ of habeas corpus from the Court of Central Jurisdiction, the United States District Court for the District of Minnesota or the Eighth Circuit Court of Appeals or the United States Supreme Court shall be available to all persons whose liberties have been restricted under the laws of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 10.01.

§ 12. Presumption of Innocence.

In any criminal legal proceeding each person shall be presumed innocent until proven guilty.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 11.

§ 13. Protection for Cultural Values.

The Band Assembly for the Non-Removable Mille Lacs Band of Chippewa Indians shall in all its actions seek to preserve and protect the official language of the Band as Ojibwe, the official religion of the Band as Me da win, and protect the Band's aboriginal rights and sovereignty, as well as the unwritten customs and traditions of the Band.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 12.

Cross References

Derivation of political powers, *see* 2 MLBS § 1.

Treaty rights, *see* 2 MLBS § 1001 et seq.

§ 14. Fundamental Principles.

The rights herein enumerated are basic human rights essential to the security of the Band and individual freedoms and the continued peace and friendship between the Non-Removable Mille Lacs Band of Chippewa Indians and the United States of America as established in the Treaties of 1837, 1842, 1855, 1863, and 1864.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 13.

§ 15. Compensation for Unlawful Taking of Band Lands.

The Band Assembly hereby declares that the only means of compensation which are acceptable for unlawful taking of Band lands by other governments, persons or corporations shall be land and, furthermore, this land shall be equal in nature, value and all other respects to those lands that were subject of unlawful taking.

Historical and Statutory Notes

Source:

Band Statute 1140-MLC-1, § 14.

TITLE 2 - BAND GOVERNMENTAL POWER AND SOVEREIGNTY

<u>Chapter</u>	<u>Section</u>
1. General Provisions	1
2. Treaty Rights	1001
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4. Exclusion and Removal	3001

Historical and Statutory Notes

The Preamble of Band Statute 1141-MLC-2 provides: "WHEREAS, in 1981, the Non-Removable Mille Lacs Band of Chippewa Indians, in a historic step, adopted a form of government based on the principle of division of powers, and,

"WHEREAS, that form of government has proven to be highly satisfactory, but experience with the large body of law which was necessary to establish the system has revealed a number of flaws and ambiguities, and,

"WHEREAS, the Band Assembly has determined to improve Band government by adopting an entire Code of government, revising and replacing the former Code, NOW THEREFORE, IT IS ENACTED BY THE BAND ASSEMBLY:"

Band Statute 1141-MLC-2, §§ 1 and 2 provide: "Section 1. Purpose. The purpose of this act is to promote the general welfare of the Non-Removable Mille Lacs Bands of Chippewa Indians and its members by establishing duties, purposes and procedures for the conduct of domestic and external affairs of the Band by a form of government based upon the principle of division of powers. This statute is enacted by the authority vested in the Mille Lacs Reservation Business Committee under Article VI, Section 1 of the Constitution of the Minnesota Chippewa Tribe. "Section 2. Scope of Amending Provision. Band Statutes 1001-MLC-1, 1002-MLC-02, 1008-MLC-1, 1011-MLC-5, 1024-MLC-3, 1032-MLC-1, 1033-MLC-1,

1037-MLC-2, 1039-MLC-1, 1063-MLC-5 are hereby repealed in their entirety and replaced by the provisions of this act, except that: "Section 2.01. The provisions of Band Statute 1032-MLC-1, Section 28, relating to the authorities of the Commissioner of Corporate Affairs shall be transferred and hereinafter referenced by Band Statute 1077-MLC-16, Section 5.

"Section 2.02. The provisions of Band Statutes 1032-MLC-1, Section 29, relating to the authorities of the Commissioner of Natural Resources shall be transferred and hereinafter referenced by Band Statute 1030-MLC-22, Section 32."

The Title of Band Ordinance 40-03 is "An Ordinance to Increase the Geographic Jurisdiction for Housing Renovation Services."

The Preamble of Band Ordinance 40-03 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe to increase the Geographic Jurisdiction for Housing Renovation Services."

Sections 1, 2 and 5 of Band Ordinance 40-03 provide: "Section 1. Title 2 Mille Lacs Band Statutes Annotated section 10 (referred to in this Act as 2 MLBS sec. 10), "Geographical Jurisdiction for Services" is repealed by this Act and replaced as follows.

"Section 2. 2 MLBS sec. 10(a) shall be as stated in Section 3 of this Act and 2 MLBS sec. 10(b) shall be as stated in Section 4 of this Act.

"Section 5. The effective date of this law is October 1, 2002."

CHAPTER 1

GENERAL PROVISIONS

Section

- 1. Derivation of Powers.**
- 2. Written and Unwritten Laws.**
- 3. Division of Powers.**
- 4. Functions of Governmental Authority.**
- 5. Sovereign Immunity.**
- 6. Official Seal.**
- 7. Contracts with Band.**
- 8. Official Oath of Office**
- 9. Code of Ethics.**
- 10. Geographical Jurisdiction for Services.**
- 11. Designation of Band Districts.**
- 12. Waiver for Special Dispensation.**

Historical and Statutory Notes

The Title of Band Ordinance 40-03 is "An Ordinance to Increase the Geographic Jurisdiction for Housing Renovation Services."

The Preamble of Band Ordinance 40-03 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe to increase the Geographic Jurisdiction for Housing Renovation Services.”

Sections 1, 2 and 5 of Band Ordinance 40-03 provide: “Section 1. Title 2 Mille Lacs Band Statutes Annotated section 10 (referred to in this Act as 2 MLBS sec. 10), “Geographical Jurisdiction for Services” is repealed by this Act and replaced as follows.

“Section 2. 2 MLBS sec. 10(a) shall be as stated in Section 3 of this Act and 2 MLBS sec. 10(b) shall be as stated in Section 4 of this Act.

“Section 5. The effective date of this law is October 1, 2002.”

The Title of Band Ordinance 11-04 is “An Ordinance to Increase the Geographical Jurisdiction for administering Temporary Assistance to Needy Families (TANF).”

The Preamble of Band Ordinance 11-04 provides: “It is enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe to increase the Geographical Jurisdiction for administering TANF.”

Section 1 of Band Ordinance 11-04 provides: “Title 2 Mille Lacs Band Statutes Annotated section 10 is amended as follows in section 2.”

Cross References

Construction and interpretation of this Chapter and Title 3, *see* 3 MLBS §§ 29, 30.

§ 1. Derivation of Powers.

All political powers of the Non-Removable Mille Lacs Bands of Chippewa Indians derive from the aboriginal rights of the Band comprised of the Non-Removable Sandy Lake Band of Chippewa Indians, the Rice Lake Band of Chippewa Indians, Snake River Chippewa Indians and the Kettle River Band of Chippewa Indians, and the inherent and aboriginal rights of the people of the Band to self-government. Some of these rights have been delegated to establish a constitutional form of government in which the Constitution of the Minnesota Chippewa Tribe is the supreme law of the Band. The Band has reserved to itself, however, the power to maintain a Band government which may enact laws to preserve the sovereignty of the Band and to promote and maintain individual rights and promote the general welfare of the people of the Band.

Historical and Statutory Notes

Source: Band Statute 1142-MLC-2, § 3.

Cross References

Protection for cultural values, *see* 1 MLBS § 13.

§ 2. Written and Unwritten Laws.

All the organs of Band government are subject to written laws, consistent with the authority delegated by the constitution and unwritten laws based upon the customs and traditions of our Band since time immemorial.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-2, § 3.01.

§ 3. Division of Powers.

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.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-2, § 3.02.

Cross References

Band Assembly District Representatives, prohibition against exercising Executive or Judicial powers, *see* 3 MLBS § 8.

Joint Session of the Band Assembly, *see* 3 MLBS § 24.

Solicitor General, investigations and prosecutions against members of all three branches, *see* 24 MLBS § 1054.

§ 4. Functions of Governmental Authority.

The authority of government conferred pursuant to Articles I, VI and XIII of the Constitution of the Minnesota Chippewa Tribe is hereby divided into three functions. The three functions of our Band government shall be executive, legislative and judicial.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-2, § 4.

Cross References

Executive political authority, *see* 4 MLBS § 2.

Joint Session of the Band Assembly, *see* 3 MLBS § 24.

Judicial authority, *see* 5 MLBS § 101

Legislative political authority, *see* 3 MLBS § 1.

§ 5. Sovereign Immunity.

- (a) The Band Assembly shall direct by law, in what manner, and in what courts, suits may be brought against the Non-Removable Mille Lacs Bands of Chippewa Indians. Except as specifically authorized by Band Statute, the Non-Removable Mille Lacs Bands of Chippewa Indians shall not be subject to suit in any court of competent jurisdiction without its express written consent to such suit. The sovereign immunity of the Non-Removable Mille Lacs Bands of Chippewa Indians shall apply unless expressly waived by Band statute.

- (b) Under no circumstances or matters of material fact shall the Band Assembly waive sovereign immunity for the provisions of services to members of the Non-Removable Mille Lacs Band of Chippewa Indians, when said members as citizens of the state of Minnesota meet eligibility guidelines to receive said services. Any said official of the Band shall have no authority, upon his authorization of any contractual document to consent, on behalf of the Band to suit in any court of competent jurisdiction or to submit to any binding arbitration utilizing the civil rules of procedure of the United States of America or the state of Minnesota in any dispute which involves the Band. Therefore, the appearance of any signature of any official of the Non-Removable Mille Lacs Band of Chippewa Indians to any contractual document shall be valid only for the purposes of implementing the Indian Self Determination and Education Assistance Act of 1975, Public Law 93-638 (25 U.S.C.A. § 450 et seq.) by providing assistance to Indians from Indians. The foregoing shall be liberally construed so as to effectuate the purposes thereof.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 75.01.
Band Statute 1142-MLC-2, § 30.

§ 6. Official Seal.

The Official Seal of the Non-Removable Mille Lacs Band of Chippewa Indians shall be affixed to all official documents of the Executive and Legislative Branches of government for the Non-Removable Mille Lacs Bands of Chippewa Indians. Any document of the Executive or Legislative Branch that is required to possess the Official Seal affixed shall have no force or effect and no weight in law until such time as the Seal is affixed.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-2, § 35.

§ 7. Contracts with Band.

All contractual or other types of agreements, regardless of subject matter shall be executed on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians and contain the official seal of the Band to be of any force and effect in any court of law. All said contract or contracts entered into in violation of this Section shall be of no force or effect.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 75.

Cross References

Contracts with Indian tribes, *see* 25 U.S.C.A. § 81 et seq.

§ 8. Official Oath of Office.

The Chief Justice, or any other Justice of the Court of Central Jurisdiction, before the Band Assembly shall administer the official Oath of Band Office to all popularly-elected leaders of the Band and to any appointee of the Band. The Oath shall be: "I, (name of officer), do hereby swear that I will support, honor and protect the Constitution of the Minnesota Chippewa Tribe, the Constitution of the United States of America, and the laws of the Non-Removable Mille Lacs Band of Chippewa Indians, and I will protect the rights of Band members and others under the jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians, and I will faithfully and impartially discharge the duties of the office to which I hold to the best of my judgment and ability, so help me gi chi ma ni do.

Historical and Statutory Notes

Source: Band Statute 1142-MLC-2, § 34.

Cross References

Federation Cultural Resources Board, oath of office, *see* 10 MLBS § 106.

Oath for Band offices, *see* 5 MLBS § 15.

9. Code of Ethics.

The Band Assembly shall establish by law a code of ethics to govern the behavior of all elected and appointed officers of the Non-Removable Mille Lacs Bands of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-2, § 18.

Cross References

Recall of appointed officials, violations of code of ethics, *see* 4 MLBS § 15.

§ 10. Geographical Jurisdiction for Services.

- (a) **General Geographic Service Area.** Enrolled members of the Non-Removable Mille Lacs Band of Ojibwe who reside on trust and/or allotted land or who reside within a thirty-mile radius of such trust and/or allotted land shall be entitled to participate in the Cultural, Natural Resources, Economic, Social, Educational, Health and General Welfare Resources of the Band Government as authorized by Article XIII of the Constitution of the Minnesota Chippewa Tribe.
- (b) **Geographical Service Area for Housing Renovations.** The Geographical Service Area for Housing Renovation Services shall be any place in the State of Minnesota and on any other lands which are located within fifty (50) miles of Mille Lacs Band trust or allotted lands.
- (c) **Geographical Service Area for administering TANF.** The Geographical Service Area for administering TANF shall be the Minneapolis/St. Paul urban areas of Hennepin, Anoka, and Ramsey Counties in addition to the geographical Jurisdiction in Title, 2, section 2 and shall be in accordance with a plan submitted by the Commissioner of Education and approved by the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 25.
Band Ordinance 40-03, §§ 3 and 4. Band
Ordinance 11-04, § 2.

§ 11. Designation of Band Districts.

- (a) District I of the Mille Lacs Bands of Chippewa Indians shall be known as Nay-ah-Shing. All trust and/or allotted land within the aforementioned geographical radius with the exception of Chi-mi-ni-sing, (Isle) shall constitute the service jurisdiction of District I.
- (b) District II of the Mille Lacs Bands of Chippewa Indians shall be known as Ga-me-ta-wa-ga-gi-mog, (Sandy Lake) and be comprised of the following geographical locations: Mi-ni-si-na-kwang (East Lake), Chi-mini-sing, (Isle). All trust and/or allotted land within the aforementioned geographical radius shall constitute the service jurisdiction of District II.

- (c) District III of the Mille Lacs Bands of Chippewa Indians shall be known as Ah-sho-moog, (Lake Lena) and be comprised of the following geographical locations: Ne-shi-gwa-go-gog, (Pine City), A-sin-ni-ga-ning, (Sandstone), and Ga-shi-gwa-na-bi-go-gog, (Hinckley). All trust and/or allotted land within the aforementioned geographical radius shall constitute the service area of District III.

Historical and Statutory Notes

Source: Band Statute 1142-MLC-3, § 26

Cross References

Consolidated Nay-Ah-Shing School Board, election from Districts, *see* 9 MLBS § 3.

Legislative districts, *see* 3 MLBS § 1.

Motor vehicle registration, application for registration, *see* 19 MLBS § 106.

§ 12. Waiver for Special Dispensation.

The Band Assembly upon petition of the Chief Executive may issue a Section 20 waiver for participation in resources offered by the Band for the benefit of any Band members or executive administration upon petition of just cause

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 27.

CHAPTER 2

TREATY RIGHTS

Subchapter

- 1. General Provisions**
- 2. Implementation of Usufructuary**

Section

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SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 1001. Policy.**
- 1002. Supreme Law.**
- 1003. Legal and Moral Obligation of United States.**

1004. Cultural Importance of Usufructuary Rights.

1005. Conservation.

1006. Recognition by United States Courts.

1007. Authorization.

1008. Exterior Legal Counsel.

Historical and Statutory Notes

The Preamble of Band Statute 1056-MLC-24 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of exercising usufructuary rights of Band members in the territory ceded in 1837."

Cross References

1837 Treaty Conservation Code for the Minnesota Ceded Territory, *see* 11 MLBS § 4001 et seq.
Migratory bird hunting off reservation, memorandum agreement with U.S. Fish and Wildlife Service, *see* Nat. Res. Comm. Order 144-90.
Protection for cultural values, *see* 1 MLBS § 13.

§ 1001. Policy.

The Band Assembly hereby declares that the Mille Lacs Band of Chippewa Indians has upheld all provisions of the Treaty of 1837 (7 Stat. 536). Due to the active infringement of its usufructuary rights by the Government of the State of Minnesota, members of the Mille Lacs Band of Chippewa Indians have not enjoyed the protection guaranteed in Article V of the Treaty of 1837. Therefore, it shall be the policy of the Mille Lacs Band of Chippewa Indians to aggressively assert all rights, privileges and responsibilities contained in all provisions of said Treaty without infringement by any other government.

Historical and Statutory Notes

Source:

Band Statute 1056-MLC-24, § 1.

§ 1002. Supreme Law.

The Band Assembly hereby declares that in all matters before the Court of Central Jurisdiction, all treaties to which the Mille Lacs Band is a party shall have a status equal to the supreme law of all land under the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1056-MLC-24, § 1.01.

§ 1003. Legal and Moral Obligation of United States.

The Band Assembly hereby declares that the United States of America is possessed of a legal and moral obligation to guarantee usufructuary rights of members of the Mille Lacs Band of Chippewa Indians by virtue of Congress ratification of the Treaty of 1837.

Historical and Statutory Notes

Source:

Band Statute 1056-MLC-24, § 1.02.

Cross References

1837 Treaty Conservation Code for the Minnesota Ceded Territory, *see* 11 MLBS § 4001 et seq.

§ 1004. Cultural Importance of Usufructuary Rights.

The Band Assembly hereby declares that members of the Mille Lacs Band of Chippewa Indians are culturally heavily dependent on hunting, fishing, and the gathering of wild rice as vital to the continuance of a cultural existence in the ceded territory.

Historical and Statutory Notes

Source:

Band Statute 1056-MLC-24, § 1.03.

§ 1005. Conservation.

The Band Assembly hereby declares that it is the policy of the Mille Lacs Band of Chippewa Indians that the exercise of this treaty right shall be in accordance with culturally established principles of conservation.

Historical and Statutory Notes

Source:

Band Statute 1056-MLC-24, §1.04.

§ 1006. Recognition by United States Courts.

Usufructuary rights guaranteed by Article V of the Treaty of 1837 have been recognized by the United States Court of Appeals for the Seventh Circuit in the matter of Lac Courte Oreilles Band of Chippewa Indians v. Lester P. Voight. The Solicitor General for the United States of America has further taken the position before the Supreme Court of the United States that this case was correctly decided. The Supreme Court denied Certiorari.

Historical and Statutory Notes

Source:

Band Statute 1056-MLC-24, § 4.

§ 1007. Authorization.

The Band Assembly hereby directs and empowers the Chief Executive, the Commissioner of Natural Resources, and the Solicitor General to initiate lawful activities which will secure the active involvement of the United States of America in securing usufructuary rights of Band members in the area beginning at the junction of the Crow Wing and Mississippi Rivers, between twenty and thirty miles above where the Mississippi is crossed by the forty-sixth parallel of north latitude, and running thence to the north point of Lake St. Croix, one of the sources of the St. Croix River; thence to and along the dividing ridge between the waters of Lake Superior and those of Mississippi, to the sources of the Ocha-sua-sepe a tributary of the Chippewa river; thence to a point on the Chippewa river, twenty miles below the outlet of Lake De Flambeau; thence to the junction of the Wisconsin and Pelican rivers' thence on an east course twenty-five miles; thence southerly, on a course parallel with that of the Wisconsin river; to the line dividing the territories of the Chippewa and Menominee; thence to the Plover portage; thence along the southern boundary of the Chippewa country, to the commencement of the boundary line dividing it from that of the Sioux, half a days march below the falls on the Chippewa river; thence with said boundary line to the mouth of Wah-tap river, at its junction with the Mississippi; and thence up the Mississippi to the place of beginning.

Historical and Statutory Notes

Source:

Band Statute 1056-MLC-24, § 2.

Band Statute 1056-MLC-24, §§ 3 and 5.

Cross References

Geographical restrictions of natural resource regulations, *see* 11 MLBS §§ 2004, 2005.

§ 1008. Exterior Legal Counsel.

The Band Attorneys are hereby authorized and directed to assist the Solicitor General of the Mille Lacs Band of Chippewa Indians in the legal implementation of this chapter.

Historical and Statutory Notes

Source: Band Statute 1056-MLC-24, § 6.

SUBCHAPTER 2

IMPLEMENTATION OF USUFRUCTUARY RIGHTS

<u>Part</u>	<u>Section</u>
A. General Provisions	1101
B. Great Lakes Indian Fish and Wildlife Compact	1151

Historical and Statutory Notes

The Preamble of Band Statute 1092-MLC-5 provides: "It is enacted, an Indian Fish and Wildlife Compact with Keweenaw Bay Band of Chippewa Indians, Red Cliff Band of Chippewa Indians, Bad River Band of Chippewa Indians, Mole Lake Band of Chippewa Indians, Lac Courte Oreilles Band of Chippewa Indians, Grand Portage Band of Chippewa Indians, Fond du Lac Band of Chippewa Indians, St. Croix Band of Chippewa Indians, Bay Mills Band of Chippewa Indians, Lac du Flambeau Band of Chippewa Indians for the exercise of usufructuary right in the Wisconsin territory of the Treaty of 1837."

Cross References

Natural Resources Protection Code, *see* 11 MLBS § 2001 et seq.

PART A

GENERAL PROVISIONS

Section

- 1101. Reservation of Right of Amendment.
- 1102. Rights of Band Members.
- 1103. Applicability of Natural Resources Code.
- 1104. Court of Central Jurisdiction.
- 1105. Conflicting Laws.
- 1106. Obligations of the United States of America.
- 1107. Rules and Regulations.
- 1108. Obligations of Solicitor General.

§ 1101. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend or repeal the several provisions of this subchapter, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 12.

§ 1102. Rights of Band Members.

Every enrolled member of a constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians shall have usufructuary rights provided that in the exercise of said rights, no Band member shall violate the terms and conditions established to exercise said rights.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 17.

§ 1103. Applicability of Natural Resources Code.

All provisions of the Natural Resources Code (11 MLBS § 2001 et seq.) shall apply to the exercise of usufructuary rights by Band members in all the territory ceded by the Treaty of 1837.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 13.03.

§ 1104. Court of Central Jurisdiction.

The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from implementation of this subchapter. Nothing in this subchapter shall be construed as a waiver of sovereign immunity of the Non-Removable Mille Lacs Band of Chippewa Indians in any state or federal court of competent jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 6.

Cross References

Subject matter jurisdiction, Court of Central Jurisdiction, see 5 MLBS § 111.

§ 1105. Conflicting Laws.

The provisions of this subchapter shall control and be supreme in the event it shall be employed notwithstanding any statutory provision to the contrary or in conflict herewith and the justices of the Court of Central Jurisdiction shall be bound thereby.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 15.

§ 1106. Obligations of the United States of America.

Nothing herein or the application thereof shall be construed by any government, agency, person or circumstance as a waiver by the Non-Removable Mille Lacs Band of Chippewa Indians of the solemn, special trust obligation of the United States of America, as legal trustee for the land, air, water and general natural resource and environmental right, privileges and interests of the Band.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 10.

§ 1107. Rules and Regulations.

The Commissioner of Natural Resources shall have the power to issue Commissioner's Orders for the purpose of promulgating all rules and regulations for the exercise of usufructuary rights by Band members in all the territory ceded by the Treaty of 1837 regardless of state boundaries and borders.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 13.01.

Cross References

Commissioner's Orders, *see* 4 MLBS § 7.

§ 1108. Obligations of Solicitor General.

- (a) Should there be any doubt as to the proper interpretation of any part of this chapter, the Chief Executive, Speaker of the Assembly or the Commissioner of Natural Resources shall submit such question to the Solicitor General, who shall give his

written opinion thereon and such opinion shall be binding until annulled by the full Court of Central Jurisdiction or amended by law.

- (b) The Solicitor General, consistent with the statutory authority conferred by law shall represent the interests of the Non-Removable Mille Lacs Band of Chippewa Indians in all matters, related to enforcement of Band law be they prosecutorial or otherwise in the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 14.

Cross References

Duties of Solicitor General, *see* 4 MLBS § 18.

PART B

GREAT LAKES INDIAN FISH AND WILDLIFE COMPACT

Section

1151. Findings and Determinations.

1152. Constitution of Great Lakes Indian Fish and Wildlife Commission.

1153. Compact for Non-Removable Mille Lacs Band of Chippewa Indians.

1154. Voight Inter-Tribal Task Force Charter.

1155. Ratification.

1156. Enabling Legislation.

1157. Withdrawal.

1158. Construction and Severability.

1159. Cooperation of Band Officers.

1160. Commissioner of Natural Resources.

§ 1151. Findings and Determinations.

- (a) The Band Assembly hereby finds and determines that usufructuary rights exist in all territories encompassed by the Treaties of July 29, 1837, 7 Stat. 536, and October 4, 1842, 7 Stat. 842 as construed by the Seventh Circuit Court of Appeals in *Lac Courte Oreilles Band vs. Voight*, 700 F.2d 341, cert. denied 104 S. Ct. 53, 464 US 805, 78 L.Ed.2d 72 (1983).
- (b) The Band Assembly finds and determines that the sovereignty and jurisdiction of each Band who was signatory to the aforementioned treaties shall extend to all places

interior and exterior to their boundaries thereof as defined in federal law. Notwithstanding any provisions of any law of the Mille Lacs Band to the contrary, the Mille Lacs Band shall now and hereafter retain and exercise civil and criminal jurisdiction over enrolled members of the Mille Lacs Band of Chippewa Indians who exercise usufructuary rights in the territory ceded in the aforementioned treaties.

- (c) The Band Assembly hereby finds and determines that just cause exists for the Non-Removable Mille Lacs Band of Chippewa Indians to be a party to a Commission known as the Great Lakes Indian Fish and Wildlife Commission.
- (d) The Band Assembly finds and determines that a Compact is required, pursuant to the laws of the Non-Removable Mille Lacs Band of Chippewa Indians. Said Compact to be known as the Great Lakes Indian Fish and Wildlife Compact.
- (e) The Band Assembly finds and determines that a Constitution proposed by the constituent Bands of the Great Lakes Indian Fish and Wildlife Commission is incompatible with the laws of the Non-Removable Mille Lacs Band of Chippewa Indians, however we find and determine that in the best interests of unity and conservation of the natural resources, an agreement is necessary and prudent.
- (f) The Band Assembly hereby finds and determines that any other party to this Commission shall exercise whatever statutory authority deemed necessary to be party to said Commission.
- (g) Therefore, the Band Assembly hereby finds and determines that the document entitled, "Constitution of the Great Lakes Indian Fish and Wildlife Commission"(2 MLBS § 1152.) is hereby ratified and approved subject to condition entered in the foregoing 'Compact'. Anything in the contents of the 'Constitution', which is inconsistent with any provision of the 'Compact' both ratified herein, it shall be the 'Compact' that controls on behalf of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 1.

Cross References

Court of Central Jurisdiction, jurisdiction over persons, *see* 5 MLBS §§112, 113.

§ 1152. Constitution of Great Lakes Indian Fish and Wildlife Commission.

- (a) Entered into by and between the following Bands of Chippewa Indians:
 - (1) Keweenaw Bay

- (2) Bay Mills
- (3) Mole Lake
- (4) Bad River
- (5) Red Cliff
- (6) Fond du Lac
- (7) Grand Portage
- (8) Lac Courte Oreilles
- (9) St. Croix
- (10) Lac du Flambeau
- (11) Non-Removable Mille Lacs Band

(b)

PREAMBLE

WE, THE INDIAN TRIBES OF THE GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION RECOGNIZE THAT OUR FISH, WILDLIFE AND OTHER RENEWABLE RESOURCES ARE IMPORTANT NATURAL RESOURCES AND OF VITAL CONCERN TO THE INDIAN TRIBES OF THE GREAT LAKES REGION AND THAT THE CONSERVATION OF THIS RESOURCE IS DEPENDENT UPON EFFECTIVE AND PROGRESSIVE MANAGEMENT. AND IT IS FURTHER RECOGNIZED THAT THE TRIBES HAVE REGULATORY AUTHORITY AND A RESULTANT DUTY TO PROTECT THE RESOURCE THAT IS OF GREAT IMPORTANCE TO US. WE FURTHER BELIEVE THAT BY UNITY OF ACTION WE CAN BEST ACCOMPLISH THESE THINGS, NOT ONLY FOR THE BENEFIT OF OUR PEOPLE BUT FOR ALL THE PEOPLE OF THE GREAT LAKES.

ARTICLE I NAME

The name of this organization shall be the GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION.

ARTICLE II PURPOSE

- 1. The GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION was begun in recognition of the traditional pursuits of the Native American people and the deep abiding respect for the circle of life in which our fellow creatures have played an essential life-giving

role. As governments who have inherited the responsibilities for protection of our fish, wildlife, and plants we are burdened with the inability to effectively carry-out our tasks as protectors and managers. This is especially true now that the state and federal courts have recognized our traditional claims. We have never intended to abandon our responsibilities.

2. The purpose of this organization are exclusively charitable and educational and shall be:
 - A. To provide an organization to facilitate and coordinate intertribal communications in the Great Lakes concerning matters pertaining to the exercise of usufructuary rights including fish and wildlife management, treaty rights issues, court cases related to fish and wildlife, tribal and/or inter-tribal regulations.
 - B. To assist tribal governments in the protection, preservation, conservation and prudent use and management of tribal fish, wildlife, and plant resources in the Great Lakes area.
 - C. To direct the administration of federal programs, funds and efforts in order to aid and assist the federally recognized members of this organization.
 - D. To educate Indian and non-Indian professionals involved in fish and wildlife management and others in the general public similarly dedicated to the protection, preservation, enhancement and prudent use of fish, wildlife and other resources.
 - E. To provide administrative support for and provide expertise and advice to tribal governments in the Great Lakes relating to the protection, preservation, enhancement and prudent use and management of fish, wildlife and other resources in the Great Lakes.
 - F. To improve the general welfare of Indian people in the Great Lakes through educational, charitable, and fish and wildlife related activities.
 - G. To carry out the purposes as herein set forth in any state, territory, district, possession, dependency, or other political subdivision of the United States of America or in any foreign country at any other location in the world to the extent that such purposes are not forbidden by the laws of such state, territory, district, possession, dependency, or political subdivision of the United States of America, or of such foreign country, or of such other political entity as may be applicable; provided, however, that such purposes shall be accomplished and exercised only if they may be accomplished and exercised under and in accordance with, Section 501 (c) (3) of the Internal Revenue Code of 1954 and any amendments thereto.

ARTICLE III MEMBERS

1. Membership shall be open to an Indian tribe in the Great Lakes region who:
 - A. Is recognized as a tribe by federal treaty, statute, agreement or regulation; and who;

B. Is organized and operating under a constitution and by-laws; and who;

C. Ratifies this constitution and bylaws of appropriate tribal resolution.

ARTICLE IV GOVERNING BODY

1. The governing body shall be the Commission. The Commission shall consist of the tribal Chairpersons from each member tribe.
2. Two committees of the Commission are hereby established. Great Lakes Indian Fisheries Commission and Voigt Fish and Wildlife Committee, each of which shall be governed by a charter ratified by the constituent tribes of each committee.
 - a. Upon selection the tribe shall notify the Commission of their duly authorized representative by letter.
3. The Commission members shall report in writing to their respective governing body on the business transacted, including recommendations for final approval relating to any contract or agreement to be entered on behalf of member tribes, by the Commission.
4. A special meeting of the Commission can be called by the Chairman at the request of any Commission member.

ARTICLE V OFFICERS

1. The officers of the Commission shall be the Chairman, Vice Chairman and Secretary, and shall be elected by the members of the Commission.
2. The term of office of each officer shall be for one (1) year and shall commence with the regular meeting, except the first elected officers shall serve until the first regular election.

ARTICLE VI VACANCIES AND REMOVAL OF OFFICERS

1. If a Commission officer shall die, resign, permanently leave the state or tribe which she/he represents, the Commission shall declare the position vacant and shall select a replacement for the balance of the unexpired term.

ARTICLE VII DUTIES OF OFFICERS

1. The Chairman shall preside over all meetings of the Commission and shall perform all duties of a Chairman and exercise any authority delegated to him by the Commission and shall have all authority to sign all documents for the Commission. She/he shall vote in all matters for his respective tribe.

2. The Vice-Chairman shall assist the Chairman when called upon to do so in the absence of the Chairman, she/he shall preside. While presiding, she/he shall have all the rights, privileges, and duties as well as the responsibilities of the Chairman.
3. The Secretary shall work with administrative staff to ensure that official minutes of all meetings are kept and that meeting notices are mailed in a timely manner.
4. The Executive Administrator shall be appointed by the Commission.

ARTICLE VIII MEETINGS

1.
 - a. The conduct and procedure of the meetings may be further defined by the appropriate resolution of the Commission.
 - b. A quorum shall consist of a majority of the Commission membership.

ARTICLE IX POWERS OF THE COMMISSION

1. The Commission shall have the following powers:
 - a. To formulate and adopt a budget for Commission activities.
 - b. To formulate a broad natural resource management program for those matters of concern to the committee.
 - c. To coordinate committee budgets and the work of the committees.
 - d. To administer the provision of technical services to the committees and the member tribes.
 - e. Request technical advice and/or assistance from any source whatever for the purpose of assisting tribal fish and wildlife programs and to consult with any and all individuals, organizations, institutions, and government (tribal, local, state, federal, and international) on matters pertaining to fish and wildlife.
 - f. To render any assistance within the authority of the Commission to any tribe requesting such assistance.
 - g. As a non-profit organization to accept funds from state, federal, private foundations or other sources for operations.
 - h. To provide public information.
2. Any and all rights vested in members' tribes shall not be abridged by this Constitution.

3. The Commission shall interpret any and all ambiguous words and phrases found within this Constitution.

ARTICLE X POWERS OF THE COMMITTEES

1. Each constituent committee shall have the following powers:
 - a. To formulate and adopt a budget to carry out its activities and to secure funding therefore.
 - b. To formulate a broad natural resource management program for those matters of concern to the committee.
 - c. To carry out any other powers provided in Charter.
2. Any and all rights vested in members' tribes shall not be abridged by this Charter.

ARTICLE XI AMENDMENTS

This Constitution may be amended by unanimous vote of the member tribes upon at least 15 days' notice prior to such meeting to consider such proposed amendment submitted to member tribes.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 2.

§ 1153. Compact for Non-Removable Mille Lacs Band of Chippewa Indians.

- (a) Entered into by and between the Non-Removable Mille Lacs Band of Chippewa Indians for the purpose of declaring the conditions under which the Band enters into the Great Lakes Indian Fish and Wildlife Commission. The Band Assembly hereby determines that any Band party to the provision of the "Constitution" found in 2 MLBS § 1152, shall in their own right, enter into the Great Lakes Indian Fish and Wildlife Commission upon terms designated in Article III of 2 MLBS § 1152.
- (b) THE NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS HEREBY SOLEMNLY AGREES TO:

GREAT LAKES INDIAN FISH AND WILDLIFE COMPACT

GREAT LAKES INDIAN FISH AND WILDLIFE COMPACT is hereby ratified, enacted into law, and by this Band as party thereto with any other Band which, pursuant to Article II of said Compact, that desires to legally join therein substantially as follows:

ARTICLE I

The purpose of this Compact are, through means of joint or cooperative action:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of Indian resources within the Treaty Cession of 1837/42 (hereinafter called Treaty Cession).
2. To plan for the welfare and development of the Indian resources of the Treaty Cession on a whole as well as for those portions of the Treaty which may have problems of special concerns.
3. To make it possible for Reservations within the Treaty and their members to derive the maximum benefit from the utilization of these resources.
4. To establish and maintain an intergovernmental agency to the end that the purposes of this Compact may be accomplished more effectively.

ARTICLE II

This Compact shall enter into force and become effective and binding when it has been enacted by any Reservation by such action as their laws and the laws of their government may prescribe for adherence thereto.

ARTICLE III

The Great Lakes Indian Fish and Wildlife Commission created by Article IV of this Compact shall exercise its power and perform its functions in respect to the Treaty Cession Area for which is the purposes of this Compact. The authorization of two committees of the Commission are hereby established, Great Lakes Indian Fisheries Commission and Voight Intertribal Task Force each of which shall be governed by a charter ratified by the respective laws of the Band Governments.

ARTICLE IV

- A. There is hereby created an agency of the party Bands to be known as the Great Lakes Indian Fish and Wildlife Commission. In that name the Commission may sue and be sued. In any of the party's Court of Competent Jurisdiction, the individual party's governing body may at its discretion notify the Band Court no later than 72 hours after any case has been filed of its decision to accept or reject any decision filed by the Court. However, the Great Lakes Indian Fish and Wildlife Commission must put forth a proper defense in any case to which it is a defendant. Actions by non-Indian parties of this Compact shall only be filed in a competent court of one of the parties of this Compact.

Transaction involving federal funds shall conform to the laws of any Band Government within whose territory funds are being expended. The Commission may pursuant to by-laws provided for the execution and acknowledgment of all instruments in its behalf.

- B. The Commission shall be composed of one member from each Band Government as designated or appointed in accordance with the law of the Band Government which they represent and serve and subject to removal in accordance with such law.
- C. Each band delegate shall be entitled one vote in the Commission. The presence of commissioners from a majority of the party Bands shall constitute a quorum for the transaction of business at any meeting of the Commission. Actions of the Commission shall be by a majority of the votes cast except that any recommendations made pursuant to Article VI of this Compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the Bands present and voting.
- D. The commissioners of any two or more party Bands may meet separately to consider problems of particular interest to their Band but no action taken at any such meeting shall be deemed an action of the Commission unless and until the Commission shall specifically approve the same.
- E. In the absence of any commissioner, a representative casting said vote shall have a written proxy in proper form as may be required by the Commission.
- F. The Commission shall elect annually from among its members a chairman, vice-chairman and secretary-treasurer. The executive director shall serve at the pleasure of the Commission and at such compensation and under such terms and conditions as may be fixed by it. The executive director shall be custodian of the records of the Commission with authority to affix the Commission's official seal and attest to and certify such records or copies thereof.
- G. The executive director, subject to the approval of the Commission in such cases as its by-laws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions Subject to the aforesaid approval, the executive director may fix their compensation, define their duties, and require bond of such of them as the Commission may designate.
- H. The executive director, on behalf of, as trustee for, and with the approval of the Commission, may borrow, accept, or contract from the services of personnel from any government or any subdivision or agency thereof, from any intergovernmental agency, or from any institution, person, firm or corporation; and may accept from any of the commissioners purposes and functions under this Compact any and all donations, gifts, and grants of money, equipment, supplies, materials and services from any state or government or any subdivision or agency thereof or intergovernmental agency or from any institution, person, firm or corporation and may receive and utilize the same.

- I. The Commission may establish and maintain one or more offices for the transacting of its business and for such purposes the executive director on behalf, of as trustee for, and with the approval of the Commission, may acquire, hold and dispose of real and personal property necessary to the performance of its functions.
- J. The Commission may adopt, amend and rescind by-laws, rules, and regulations for the conduct of its business.
- K. The Commission and its executive director shall make available to the party Bands any information within its possession and shall always provide free access to its records by duly authorized representatives of such party Band.
- L. The Commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party Band.
- M. The Commission may issue any reports as it may deem desirable.

ARTICLE V

- A. The Commission shall submit to the executive head or designated officer of each party Band a budget of its estimated expenditures for such period as may be required by the laws of the Band for presentation to the Government thereof.
- B. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party Bands. Detailed Commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests. Majority is defined as 3/4 of all parties.
- C. The Commission shall not pledge the credit of any party Band. The Commission may meet any of its obligations in whole or in part with funds available to it under Article IV (H) of this Compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV (H) hereof, the Commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.
- D. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under the bylaws. However, all receipts and disbursement of funds handled by the Commission shall be audited yearly by a certified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

- E. The account of the Commission shall be open at any reasonable time for inspection by such agency, representative or representatives of the party Band as may be duly constituted for that purpose and others who may be authorized by the Commission.

ARTICLE VI

The Commission shall have power to:

- A. Collect, correlate, interpret, and report on data relating to the Indian resources and the use thereof in the Treaty Cession or any portion thereof.
- B. Recommend methods for the orderly, efficient, and balanced development, use and conservation of the Indian resources of the Treaty Cession or any portion thereof to the party Band and to any other governments or agencies having interest in or jurisdiction over the Treaty Cession or any portion thereof.
- C. Consider means of improving and maintaining the fisheries and wildlife of the Treaty Cession or any portion thereof.
- D. Recommend policies relating to Indian resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.
- E. Recommend uniform or other laws, or regulations relating to the development, use and conservation of the Treaty Cession resources to the party Band or any of them and to other governments, political subdivision, agencies or intergovernmental bodies having interests in or jurisdiction sufficient to affect conditions in the Treaty Cession or any portion thereof.
- F. Consider and recommend amendments or agreement supplementary to this Compact to the party Bands or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.
- G. Prepare and publish reports, bulletins and publications appropriate to this work and fix reasonable sale prices thereof.
- H. With respect to the Indian resources of the Treaty Cession or any portion thereof, recommend agreements between the governments of the United States and Canada.
- I. Cooperate with the governments of the United States and of Canada, the party Band and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Treaty Cession or any portion thereof.
- J. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this Compact, provided that no action of the Commission shall have the force of law in, or be binding upon any party Band.

ARTICLE VII

Each party Band agrees to consider the action the Commission recommends in respect to:

- A. To provide an organization to facilitate and coordinate intertribal communication in the Great Lakes concerning matters pertaining to the exercise of usufructuary right including fish and wildlife management, treaty rights issues, court cases related to fish and wildlife, tribal and/or intertribal regulations.
- B. Measures for combating pollution.
- C. To assist tribal governments in the protection, preservation, conservation and prudent use and management of tribal fish, wildlife and plant resources in the Great Lakes area.
- D. Propose wildlife improvement.
- E. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wildlife and other Indian resources.
- F. To direct the administration of federal programs, funds, and efforts in order to aid and assist the federally recognized members of this organization.
- G. To educate Indian and non-Indian professionals involved in fish and wildlife management and others in the general public similarly dedicated to the protection, preservation, enhancement and prudent use of fish, wildlife and other resources.
- H. To provide administrative support for and provide expertise and advice to tribal governments in the Great Lakes relating to the protection, preservation, enhancement and prudent use and management of fish, wildlife and other resources in the Great Lakes.

ARTICLE VIII

This Compact shall continue in force and remain binding upon each party Band until renounced by act of the Government of such Band, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said Band, provided that such renunciation shall not become effective until six months after notice of such action shall have been officially communicated in writing to the executive head of the other party Bands.

ARTICLE IX

It is intended that the provisions of this Compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party Band or of the United States, or the applicability thereof to any Band,

agency, person or circumstance is held invalid, the constitutionality of the remainder of this Compact and the applicability thereof to any Band, agency, person or circumstance shall not be affected hereby, provided further that if this Compact shall be held contrary to the Constitution of the United States, or any party Band, the Compact shall remain in full force and effect as to the remaining Bands and in full force and effect as to the Band affected as to all severable matters.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 3.

§ 1154. Voight Intertribal Task Force Charter.

CHARTER

VOIGHT INTERTRIBAL TASK FORCE COMMITTEE

GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

ARTICLE I-NAME

The name of this committee shall be the Voight Intertribal Task Force Committee.

ARTICLE II-PURPOSE

The purposes of this committee shall be to:

1. Develop the capabilities of its members' tribes to regulate their use of natural resources.
2. Develop biological expertise in inland fish, wildlife, and plant species, communities, and ecosystems.
3. Develop resource management plans.
4. Assist tribes to develop resource regulations suitable for tribal adoption and adequate to protect the environment.
5. Develop law enforcement capabilities adequate to insure compliance with resource regulations.
6. Assist tribes in the development of judicial systems adequate to adjudicate cases arising under tribal resource regulations.

7. Assist tribes or Bands to secure through negotiations, litigation, arbitration, or any other lawful and appropriate means, the full exercise of the usufructuary rights reserved in the Treaties of 1837 and 1842.
8. Develop the capability to recognize, analyze and recommend action on actual and potential environmental degradation which may impair the opportunity to engage in usufructuary activities within the territories ceded by the Treaties of 1837 and 1842.
9. Educate tribal membership, tribal leadership, and the general public in issues and events related to the other purposes stated herein.

ARTICLE III-MEMBERSHIP

Section 1. Membership. Membership in this committee is open to any federally recognized Chippewa Tribe or Band which:

- (a) Is a member of the Great Lakes Indian Fish and Wildlife Commission; and
- (b) Is a signatory or successor thereto to either the 1837 or 1842 Treaties; and
- (c) Has a reservation within the territories ceded by the 1837 and 1842 Treaties; and
- (d) Has by resolution adopted this Charter.

ARTICLE IV-TRANSACTING BUSINESS

Section 1. Representatives. Each member tribe may appoint one representative to the committee and one alternate. Each tribe may select its representative and alternate by whatever means and for whatever term deemed appropriate by the tribe.

Section 2. Meetings. The committee shall hold an annual meeting in October of each year. The committee shall also hold meetings as needed, which may be called by the chairman, or in the absence of the chairman, the vice chairman, or in any event by any three member tribes or the executive administrator of the Commission. Meetings may be conducted by conference call.

Section 3. Action. All action must be authorized by motion and approval by a majority of those tribes in attendance.

Section 4. Voting. On all matters upon which a vote shall be taken each member tribe shall have one vote.

Section 5. Quorum. A majority of the member tribes shall constitute a quorum.

ARTICLE V-OFFICERS

Section 1. Officers. The officers of the committee shall be the chairman and vice-chairman, and shall be elected by the members of the committee at the annual meeting.

Section 2. Terms. The term of office for each officer shall be one year except that the officers first elected under this Charter shall serve until the 1985 annual meeting.

Section 3. Vacancies. In the event a committee officer is for any reason unable or unwilling to complete his or her term the committee shall, on at least 30 days' notice to its members, hold a special election for the purpose of replacing the officer.

ARTICLE VI-DUTIES OF OFFICERS

Section 1. Chairman. The chairman shall preside over all meetings of the committee, shall perform all duties of a chairman, shall exercise any authority delegated by the committee, and shall have authority to sign all documents for the committee. The chairman shall work with the administrative staff to insure that official minutes of all meetings are kept and that meeting notices are mailed in a timely manner. The chairman shall be allowed to vote.

Section 2. Vice-chairman. The vice-chairman shall assist the chairman when called upon to do so and in the absence of the chairman shall preside. While presiding, the vice-chairman shall have all the rights, privileges, duties, and responsibilities of the chairman.

Section 3. Further Duties. The duties of the officers may be defined further by motion of the committee.

ARTICLE VII-POWERS

The committee shall have the following powers:

- (1) To undertake any programs consistent with the purposes as defined in Article II.
- (2) To formulate and adopt a budget to carry out its activities, and to secure funding through the Commission therefore, and to approve modifications and amendments to the budget as may from time to time be required.
- (3) To formulate and adopt policies for the provision of technical, enforcement, and judicial services to the committee and its member tribes, to be implemented by the Commission staff.
- (4) To establish subcommittees to pursue such objectives as the committee shall direct.

ARTICLE VIII-AMENDMENTS

This Charter may be amended by affirmative vote of at least two-thirds of the member tribes upon furnishing to all member tribes of the Commission a copy of the proposed amendment at least 60 days in advance of the vote on such amendment.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 4.

§ 1155. Ratification.

The Commissioner of Natural Resources is authorized and directed to witness the ratification of the Compact by the Non-Removable Mille Lacs Band of Chippewa Indians by executing the final draft thereof in his own name as Commissioner for and on behalf of the Non-Removable Mille Lacs Band of Chippewa Indians and affixing the Seal of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 5.

§ 1156. Enabling Legislation.

This Compact shall become effective and operative immediately after passage the Constitution of the Great Lakes Indian Fish and Wildlife Commission by any five party Bands incorporating the provisions of said Constitution into the laws of such Bands.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 9.

§ 1157. Withdrawal.

The Non-Removable Mille Lacs Band of Chippewa Indians in acceding to this Compact Constitution reserves the right at any time to withdraw from said Compact-Constitution, but such withdrawal shall be based upon a law properly enacted pursuant to Band 3 MLBS § 16.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 8.

§ 1158. Construction and Severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof by the Court of Central Jurisdiction. The provisions of this Compact shall be severable and if any phrase, clause,

sentence, or provision of this Compact is declared to be contrary to the laws of any party Band or the application thereof to any agency, person or circumstance is held invalid by the Court of Central Jurisdiction, the validity of the remainder of this Compact and the applicability thereof to any agency, person, or circumstance shall not be affected thereby. If this Compact-Constitution or any part thereof shall be held contrary to the laws of any party Band, this Compact-Constitution may remain in full force and effect as to the remaining party Bands and as to the Mille Lacs Band so affected, in full force and effect as to all severable matters.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 7.

§ 1159. Cooperation of Band Officers.

All administrations and entities of the Non-Removable Mille Lacs Band of Chippewa Indians shall cooperate with the Commission and the Task Force in the execution of their functions and shall assist the Commission and the Task Force in carrying out the duties imposed upon it.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 11.

§ 1160. Commissioner of Natural Resources.

In pursuance of Article IV of the Compact and Article IV of the Charter, the Commissioner of Natural Resources shall be the duly authorized representative of the Band at meetings called by the chairman of the Commission and the Task Force at a designated location and shall exercise all voting rights conferred by the Compact and Charter as provided.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 13.

CHAPTER 3

INTERGOVERNMENTAL RELATIONS

Section

2001. Minnesota State Intertribal Affairs Council.

§ 2001. Minnesota State Intertribal Affairs Council.

Pursuant to Minnesota Statutes-Chapter 3, Section 922, the Non-Removable Mille Lacs Band of Chippewa Indians may participate in an Indian Affairs Intertribal Council, an entity of the state of Minnesota. The Chief Executive is hereby authorized and directed to notify the Governor of the state of Minnesota and other tribal governments that effective on March 1, 1985 the Non-Removable Mille Lacs Band of Chippewa Indians shall withdraw from participation in this state council and shall in no way sanction any actions of said council as they may apply to the Non-Removable Mille Lacs Band of Chippewa Indians, as the public policy of the Band is to recognize and enhance government to government diplomatic relations.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 82.

CHAPTER 4

EXCLUSION AND REMOVAL

Section

- 3001. Findings and Determinations.**
- 3002. Definitions.**
- 3003. Persons Subject to Exclusion and Removal.**
- 3004. Grounds for Exclusion and Removal.**
- 3005. Complaint for Exclusion.**
- 3006. Notice of Exclusion.**
- 3007. Exclusion Hearing.**
- 3008. Exclusion Orders.**
- 3009. Enforcement Proceedings.**
- 3010. Emergency Writs.**
- 3011. Authorized Entry for Exclusion Hearing.**
- 3012. Review of Orders of Exclusion and Removal.**
- 3013. Stays.**

Historical and Statutory Notes

The Preamble of Band Statute 1069-MLC-7 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of exclusion and removal of persons within the jurisdiction of the Band for just cause."

Cross References

Commercial practices, violations, *see* 18 MLBS § 10.

Cultural actions, sanctions, *see* 24 MLBS § 603.

Life estates in trust or restricted lands, spouse or children of member, *see* 21 MLBS § 102.

Prohibited drugs, see 23 MLBS § 1 et seq. Trespass, *see* 21 MLBS § 206.

§ 3001. Findings and Determinations.

- (a) That under federal law and Article 6, Section 1 (c), of the Constitution of the Minnesota Chippewa Tribe, and as an incident of its inherent sovereign powers, the Non-Removable Mille Lacs Band of Chippewa Indians has the authority to exclude certain persons from territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians and to determine the conditions upon which such persons may be present within said lands.
- (b) That in order to protect and promote the health, safety, morals and general welfare of the Band, its members and other residents of lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, it is necessary to provide a means to exclude or remove such persons from said lands in the event that they violate Band law or do other acts harmful to the Band, its members or other residents of territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 1.

§ 3002. Definitions.

The following terms shall have the following meanings when used in this chapter:

- (a) "**Appellate Court**" means the Appellate Division of the Court of Central Jurisdiction of the Band.
- (b) "**Band**" means any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, a federally recognized Indian Tribe.
- (c) "**Court**" means the Court of Central Jurisdiction for each constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians.
- (d) "**Constituent Bands**" means the Non-Removable Sandy Lake Band of Chippewa Indians, the Snake River Band of Chippewa Indians, the Rice Lake Band of Chippewa Indians, the Lake Lena (Knife River) Band of Chippewa Indians, and the Non-Removable Mille Lacs Band of Chippewa Indians.
- (e) "**District Court**" means the District Division of the Court of Central Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

- (f) **"Law Enforcement Officer"** means an officer of the Band authorized to enforce the laws of the Band.
- (g) **"Secretary"** means the United States Secretary of the Interior.
- (h) **"Weapon"** means an instrument of offensive or defensive combat, or anything used, or designed to be used, in destroying, defeating or injuring a person.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 13.

§ 3003. Persons Subject to Exclusion and Removal.

All persons, except those authorized by federal law to be present on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, are subject to exclusion or removal from all or any portion of said lands as provided herein.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7 § 2.

§ 3004. Grounds for Exclusion and Removal.

Persons subject to exclusion and removal may be excluded or removed from said lands for commission of one or more of the following acts within said lands:

- (a) An act that is a crime, as defined by federal or Band law, or any act which, if committed by a member of the Band, would be a crime under Band law.
- (b) Any act causing physical loss or damage of any nature to the property of the Band or Tribe, enrolled member of the Band, or other residents of land under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.
- (c) Obstructing the performance of governmental functions by any elected official, officer, agent or employee of the Band through the use or threat of force or violence, bribery, deception or other unlawful means.
- (d) Resisting arrest by a law enforcement officer through the use of threat of force or violence, bribery, deception or other unlawful means.
- (e) Rendering criminal assistance by doing any one of the following acts for the purpose of hindering the apprehension, prosecution, conviction or punishment of a person

known to have committed a crime, to be sought by law enforcement officers for the commission of a crime, or to have escaped from a detention facility:

- (1) harboring or concealing such person,
 - (2) providing to such person a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension,
 - (3) concealing, altering or destroying any physical evidence that might aid in the discovery or apprehension of such person,
 - (4) warning such person of impending discovery or apprehension, except where such warning is given in an attempt to persuade the person to comply with the law, or
 - (5) obstructing by force, threat, bribery or deception any person from performing an act that might aid in the discovery, apprehension, prosecution or conviction of such person.
-
- (f) Threatening to enter lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians to cause disturbances or riots or to conduct any other activity prohibited by law.
 - (g) Mining, cutting timber or vegetation or other use, abuse or damage to property of the Band or Tribe without authorization from the Band, Tribe or Secretary.
 - (h) Prospecting without authority from the Band or the Secretary.
 - (i) Exploring or excavating items, sites or locations of historic, religious or scientific significance without the lawful authority or permission of the Band or in violation of Band or federal law.
 - (j) Committing frauds, confidence games or usury against any enrolled member of the Band or any other resident of lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.
 - (k) Inducing any enrolled member of the Band or any other resident of said lands to enter into a grossly unfavorable contract of any nature.
 - (l) Defrauding any enrolled member of the Band or any other resident of said land of just compensation for his labor or service of any nature.
 - (m) Unauthorized taking of any property from lands under the jurisdiction of Non-Removable Mille Lacs Band of Chippewa Indians.

- (n) Entering land under the jurisdiction of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians for the purpose of evicting of a Band member or the removal of any real or personal property of a Band member without his/her written consent.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 3.

Cross References

Criminal causes of action, *see* 24 MLBS § 1001 et seq.

Historical preservation, civil penalties, *see* 10 MLBS § 603.

§ 3005. Complaint for Exclusion.

Any member, officer, agent or employee of the Band may make a complaint for exclusion. Forms of complaint will be kept by the Clerk of Court and other officials that may be designated by him. A complaint for exclusion shall be valid only if it bears the signature of the complaining witness and is witnessed by a Judge of the Court, the Clerk of Court, or a law enforcement officer. After the complaint has been duly signed and witnessed, it shall be delivered to the District Court.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 4.

§ 3006. Notice of Exclusion.

Upon receipt of a valid complaint for exclusion, the District Court shall cause notice to be served personally or, if personal service is not reasonably possible, by registered mail, upon the person proposed for exclusion. The notice shall state the reason for the proposed exclusion and shall state a time and place at which the person may appear before the District Court to show cause why he should not be excluded from said land. The hearing shall be held not less than three days after the time of service or mailing.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 5.

§ 3007. Exclusion Hearing.

After notice to the person proposed for exclusion, the District Court shall hold a hearing to determine whether the person shall be excluded from the lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. The person shall be given an opportunity to present evidence and argument at the hearing and cross examine opposing witnesses, and may be represented by council at his own expense. The District Court may, in its discretion, grant a continuance of the hearing on request by the person proposed for exclusion or upon its own motion.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 6.

§ 3008. Exclusion Orders.

After the hearing, or at the time set for the hearing if the person proposed for exclusion does not appear, the District Court may order him excluded from all or any portion of said lands, or may permit him to remain upon said lands on such conditions as the District Court sees fit to impose. Notice of the order shall be served in the manner set forth in 2 MLBS § 3006. Conditions that the District Court may impose in an order of exclusion may include, but shall not be limited to; the payment of money or performance of labor by the person to be excluded as restitution for damage caused by the person, and the payment of a civil penalty. A conditional civil penalty included in an order of exclusion shall be in the nature of a civil forfeiture and not a criminal fine and shall be for the purpose of recovering in part the costs of enforcement of this chapter. An order of exclusion shall remain in force until revoked by the District Court unless the order specifically provides otherwise.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 7.

§ 3009. Enforcement Proceedings.

If any person ordered excluded from said lands by the District Court does not promptly comply with the order of exclusion, the District Court shall order his removal from said land at the non-member's expense, or the prevention of his entry into lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, and may refer the matter to the United States Attorney for prosecution under any applicable federal statute.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 8.

§ 3010. Emergency Writs.

If, upon receipt of a valid Complaint for exclusion, the District Court finds that the presence of the person proposed for exclusion on said lands presents an immediate danger to the life, health, morals or property of the Band, its members or other residents of said land, and further finds that delay would result in irreparable injury, the District Court may issue an Emergency Writ of Exclusion without providing prior notice as required by 2 MLBS § 3006, or holding a hearing as required by 2 MLBS § 3007. The District Court shall cause the Writ to be served upon the person in the most expeditious manner practical under the circumstances. An Emergency Writ of Exclusion may, in addition to ordering the exclusion of a person, direct any law enforcement officer to remove the person from land under the jurisdiction of the Non-Removable Mille Lacs band of Chippewa Indians. In the event that removal is ordered, the law enforcement officer executing the Writ shall use only so much force as is necessary to effect the removal, and shall serve a copy of the Writ upon the person at the time of removal or as soon thereafter as possible. An Emergency Writ of Exclusion shall remain in force until revoked by the District Court unless the Writ specifically provides otherwise.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 9.

§ 3011. Authorized Entry for Exclusion Hearing.

An emergency Writ of exclusion shall contain notice to the person excluded of the time at which he may enter said land in the company of a law enforcement officer for the purpose of attending an exclusion hearing before the District Court. The person must be accompanied by a law enforcement officer at all times during his presence on said land unless the Writ specifically provides otherwise. In all other respects, the provisions of 2 MLBS §§ 3007 to 3009 shall be applicable to a person excluded from land under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians under an Emergency Writ of Exclusion.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7 § 10.

§ 3012. Review of Orders of Exclusion and Removal.

The Appellate Court shall have exclusive jurisdiction to hear appeals from orders of exclusion. No appeal may be taken from an exclusion order if the person excluded failed without good cause to appear at the exclusion hearing. An excluded person may enter said lands in the company of a law enforcement officer for the purpose of presenting argument to the Appellate Court. The person must be accompanied by a law enforcement officer at all times during his presence on said lands unless the order of exclusion specifically provides otherwise.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 11.

§ 3013. Stays.

- (a) The appellate Court may stay an order of exclusion upon condition of security as it deems just, only if:
 - (1) all prior hearing remedies have been exhausted, and
 - (2) no substantial interest of the Band, its members, or other residents of said land will be adversely affected thereby.
- (b) All orders of exclusion shall remain in full force and effect pending appeal unless stayed as provided herein.

Historical and Statutory Notes

Source:

Band Statute 1069-MLC-7, § 12.

TITLE 3 - LEGISLATIVE BRANCH

Section

- 1. Band Assembly.**
- 2. Legislative Power.**
- 3. Initiative and Referendum.**
- 4. Band Assembly Members.**
- 5. Terms of Office.**
- 6. Powers and Duties of Speaker of Assembly.**
- 7. Powers and Duties of the Secretary-Treasurer.**

8. **Powers and Duties of District Representatives.**
9. **Parliamentarian/Clerk of the Band Assembly.**
10. **Record of Proceedings.**
11. **Rules of Band Assembly.**
12. **Membership of Band Assembly.**
13. **Quorum.**
14. **Roll Call Vote.**
15. **Compensation.**
16. **Passage of Laws.**
17. **Annulment of Commissioner's Orders and Opinions of Solicitor General.**
18. **Appropriation Bills Prior to End of Fiscal Year.**
19. **Fiscal Year.**
20. **Petitions of Members of Band.**
21. **Legislative Privilege.**
22. **Assembly Powers of Inquiry.**
23. **Multi-Topic Bills.**
24. **Joint Session of Band Assembly.**
25. **Removal of Elected Officials or Appointees.**
26. **Elections.**
27. **Legislative Orders.**
28. **Style of Laws.**
29. **Interpretation of Title.**
30. **Construction of Title.**

Historical and Statutory Notes

Band Statute 1142-MLC-2, §§ 1 and 2 provide: "Section 1. Purpose. The purpose of this act is to promote the general welfare of the Non-Removable Mille Lacs Bands of Chippewa Indians and its members by establishing duties, purposes and procedures for the conduct of domestic and external affairs of the Band by a form of government based upon the principle of division of powers. This statute is enacted by the authority vested in the Mille Lacs Reservation Business Committee under Article VI, Section 1 of the Constitution of the Minnesota Chippewa Tribe.

"Section 2. Scope of Amending Provision. Band Statutes 1001-MLC-1, 1002-MLC-02, 1008-MLC-1, 1011-MLC-5, 1024-MLC-3, 1032-MLC-1, 1033-MLC-1, 1037-MLC-2, 1039-MLC-1, 1063-MLC-5 are hereby repealed in their entirety and replaced by the provisions of this act, except that:

"Section 2.01. The provisions of Band Statute 1032-MLC-1, Section 28, relating to the authorities of the Commissioner of Corporate Affairs shall be transferred and hereinafter referenced by Band Statute 1077-MLC-16, Section 5.

"Section 2.02. The provisions of Band Statutes 1032-MLC-1, Section 29, relating to the authorities of the commissioner of Natural Resources shall be transferred and hereinafter referenced by Band Statute 1030-MLC-22 Section 32."

The Title of Band Ordinance 23-99 is "An Ordinance amending the budgeting period of the Mille Lacs Band of Ojibwe and repealing and replacing 4 MLBS §3(d), 4 MLBS §10(e), 3 MLBS §18 and 5 MLBS 114(e) of the Mille Lacs Band Statutes Annotated."

The Preamble of Band Ordinance 23-99 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purposes of amending the body of law governing the Band’s budgeting period. The Band Assembly determines that it is in the Band’s best interest to appropriate Band funds for a two-year budgeting period.” Band Ordinance 23-99, §§ 1 & 2 provide:

“Section 1. Purpose “This Act is intended to amend the body of law governing the budgeting cycle of the Mille Lacs Band of Ojibwe. The purpose of this Act is to provide a process whereby the Mille Lacs Band of Ojibwe appropriates funds based on a two-year time period.

“Section 2. Repeal “3 MLBAS §18, 4 MLBS §3(d), 4 MLBS §10(e) and 5 MLBS §114(e) of the Mille Lacs Band Statutes Annotated is hereby repealed and replaced in its entirety.”

Cross References

Band government identification cards, *see* 22 MLBS § 308.

Bribery, *see* 24 MLBS § 1203.

Environmental Protection Ordinance, approval of variances, *see* 11 MLBS § 115.

Exemption from personnel manual provisions, *see* 6 MLBS § 8.

Procurement, Band Assembly responsibilities, *see* 7 MLBS § 103.

Special Revenue Resolutions, *see* 22 MLBS § 102.

§ 1. Band Assembly.

All legislative political authority of the Non-Removable Mille Lacs Bands of Chippewa Indians shall be vested in the Legislative Branch of government. The Legislative Branch of government shall be known as the Band Assembly. It shall be comprised of the duly elected representatives of the legislative districts of the Mille Lacs Reservation. Each District shall elect one representative. The Districts are as follows: District 1 Nay-Ah-Shing, District 2, Mi ni Si na kwang, Chi MI ni sing, Sandy Lake, and Minnewawa, District 3 Ah Sho Moog. The Secretary-Treasurer shall be the leader of the Band Assembly. The Secretary-Treasurer shall exercise his/her legislative duties under the title "Speaker of the Assembly." The Secretary-Treasurer shall exercise his/her financial duties under the title "Secretary of Treasury." Unless otherwise specified by Band Statute, all legislative authority of the Mille Lacs Reservation Business Committee shall be exercised by the Band Assembly. The Band Assembly is and shall be the body referred to in the Constitution as the Reservation Business Committee.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 4.01.

Cross References

Designation of band districts, *see* 2 MLBS§ 11.

Functions of governmental authority, *see* 2 MLBS § 4.

Reservation Business Committee, *see* Const. Art. 3, § 2.

§ 2. Legislative Power.

It shall be the authority and duty of the Legislative Branch to enact laws which regulate internal and external affairs of the Mille Lacs Bands in order to promote the general welfare of the people. The Band Assembly shall have power:

- (a) to enact laws which promote the general welfare of the people;
- (b) to appropriate all Band revenue regardless of source;
- (c) to confirm appointments of the Chief Executive, which are by law required to be with the advice and consent of the Band Assembly;
- (d) to adopt resolutions;
- (e) to annul any Commissioner's Order or any opinion of the Solicitor General in conformity with 3 MLBS § 17;
- (f) to ratify agreements, contracts, cooperative and reciprocity agreements and memoranda of understanding; and
- (g) to perform all other legislative functions conferred by the provisions of Article VI of the Constitution of the Minnesota Chippewa Tribe.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 5.

Cross References

Consolidated Nay-Ah-Shing School Board; powers reserved to Band Assembly, *see* 9 MLBS § 15.

Education-related funds, appropriation authority, *see* 9 MLBS § 27.

Gaming, Compacts with State of Minnesota, *see* 15 MLBS § 106.

Management agreements, ratification, *see* 15 MLBS § 105.

Negotiation and execution of agreements, contracts, etc., *see* 4 MLBS § 3.

Recommendation of agreements, contracts, etc., *see* 4 MLBS § 6.

Violation of approved Tribal Ordinance, *see* 24 MLBS § 1211.

§ 3. Initiative and Referendum.

- (a) The legislative authority of the Non-Removable Mille Lacs Bands of Chippewa Indians is vested in the Band Assembly, but there is reserved to the people the power to propose bills and laws and to enact or reject the same at the polls, independent of the Band Assembly and at their own option, to approve or reject at the polls any item, section or part of any bill or law passed by the Band Assembly, subject to election regulations promulgated by the Band Assembly.

- (b) The power of the people to approve or reject at the polls any item, section or part of any bill or law passed by the Band Assembly shall be exercised by filing a petition with the Secretary-Treasurer, signed by at least 5% of the Band members entitled to vote in tribal elections based on the total number of registered voters at the last preceding tribal election, within 20 days after the passage of such bill or law. Newly enacted bills and laws shall be posted in each district within 5 days of enactment and shall remain posted until 20 days have passed after enactment. The same petition requirements, excluding the 20 day limitation, shall apply to the power of the people to propose new bills and laws. An election regarding such initiative or referendum shall be held within 30 days after the filing of the petition.
- (c) The people shall not have the power to approve or reject at the polls any item, section or part of any bill or law passed by the Band Assembly prior to September 19, 1992.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 6.
Band Ordinance 08-93.

Cross References

Referendum, *see* Const. Art. 14, § 2.

§ 4. Band Assembly Members.

The Band Assembly shall be comprised of the popularly-elected Secretary-Treasurer who shall be the Speaker, and the popularly elected District Representatives from each of the three districts within the territorial jurisdiction of the Reservation. Each District Representative shall have one vote in the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 7.

§ 5. Terms of Office.

The terms of office of the members of the Band Assembly shall be the term prescribed for the Secretary-Treasurer and Committeemen of the Reservation Business Committee in Article IV, § 3, of the Constitution.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 8.

§ 6. Powers and Duties of Speaker of Assembly.

The Speaker of the Assembly shall be the leader of the Legislative Branch of Government and have the following authority in exercising said authority of government:

- (a)
 - (1) to convene the Assembly for due cause at any time. In the event that he/she shall fail to do so upon request of any two District Representatives, the Assembly may be convened after 48 hours' notice by any member of the Band Assembly;
 - (2) to be considered as a member of the Assembly for purposes of establishing a quorum;
 - (3) to require the prompt recording of the Assembly's acts and deeds;
 - (4) to schedule all special hearings of the Assembly upon request of any two District Representatives;
 - (5) to have the powers of authorization for issuance of all subpoenas and official documents on behalf of the Band Assembly; and
 - (6) to maintain order in all sessions of the Band Assembly.
- (b) He/she shall not be a voting member of the Assembly.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 9.

§ 7. Powers and Duties of Secretary-Treasurer.

The Secretary-Treasurer shall have the following general powers and duties in administrating the financial affairs of Band government:

- (a) to superintend and manage all fiscal operations, planning and budgeting of the Non-Removable Mille Lacs Band of Chippewa Indians as authorized by the Band Assembly;
- (b) to enforce on behalf of the Band, all judgments and claims rendered in its favor;
- (c) to receive and receipt for all monies paid into the Band treasury and safely keep the same until lawfully disbursed by formal appropriation;
- (d) to have powers of investigations of financial irregularity;
- (e) to require the production of such books, accounts, documents and property under any lawful financial inquiry in all things that will aid him/her in the performance of his/her duties;
- (f) to levy, impound or attach any financial account of the Non-Removable Mille Lacs Band of Chippewa Indians or any political subdivision thereof to prevent serious financial jeopardy or acts in violation of law. This authority shall not be exercised to contravene any lawful acts of the Band Assembly;
- (g) to issue Secretarial Orders to implement decisions concerning matters of the fiscal affairs of the Band consistent with the powers herein delegated. Such written orders shall be in uniform format, numbered consecutively and have expiration dates;
- (h) to nominate in conjunction with the Chief Executive a suitable person to act as the Commissioner of Finance;
- (i) the Secretary-Treasurer shall post a fidelity bond in favor of the Non-Removable Mille Lacs Band of Chippewa Indians in an amount satisfactory to the Band Assembly; and
- (j) the Secretary-Treasurer shall coordinate with the Commissioner of Finance for the Office of Management and Budget, to ensure that financial planning and operations are consistent.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 10.

Cross References

Commissioner of Finance, *see* 22 MLBS § 101 et seq.

Public Works Commission, financial record system, *see* 13 MLBS § 14.

Review of proposed procurement actions, *see* 7 MLBS § 6.

Violation of Secretarial Orders, *see* 24 MLBS § 1212.

§ 8. Powers and Duties of District Representatives.

- (a) The District Representatives shall have the following individual authority in the exercise of legislative powers of Band government:
 - (1) To introduce into the Band Assembly appropriate bills promoting the general welfare of the people for enactment into the laws of the Band.
 - (2) To establish district committees within their respective districts for the purpose of aiding them in the performance of their legislative duties.
 - (3) To chair public hearings on any proposed law within their appropriate district.
 - (4) To attend all sessions of the Band Assembly when called upon by the Speaker of the Assembly. The failure to attend any session of the Band Assembly shall require the official consent of the Band Assembly in order to consider said absence as excused.
 - (5) To represent the community interests of the district from which the Representative was elected. The Representative shall exercise this duty fairly and impartially in order to promote the general welfare of all district residents.
 - (6) To authorize the use of district community centers according to written standards that are fair and reasonable.
 - (7) To comply with the provisions of the oath of office of a District Representative.
 - (8) To refrain from the disclosure or distribution of any privileged or confidential information or documents that may come into their possession as a result of their office.
 - (9) To perform all legislative and other duties as may be assigned by the Speaker of the Assembly or the Band Assembly.
- (b) No popularly-elected District Representative to the Band Assembly shall exercise any of the authority properly belonging to either the Executive or Judicial branches of government or to any officer who is appointed to serve the Non-Removable Mille Lacs Bands of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 11.

Cross References

Community centers, use, *see* Exec. Order 033.
Division of powers, *see* 2 MLBS § 3.
Functions of Band government, *see* 2 MLBS § 4.

§ 9. Parliamentarian/Clerk of the Band Assembly.

The Band Assembly shall appoint an individual, not a member of the Band Assembly, who shall act as Parliamentarian and Clerk of the Band Assembly. He/she shall be independent of any supervisory authority in the Band Assembly when acting as Parliamentarian. All parliamentary decisions shall be rendered in an impartial manner and be in accordance with Robert's Rules of Order. He/she may be removed from office by unanimous vote of the Band Assembly in concurrence with the Speaker of the Assembly.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2 § 12

§ 10. Record of Proceedings.

It shall be the duty of the Clerk of the Band Assembly to record all official minutes of the proceedings of the Band Assembly. The official record of the proceedings of the Band Assembly shall be prima facie evidence of the facts stated therein in the Court of Central Jurisdiction and any other court of competent jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 12.01.

§ 11. Rules of Band Assembly.

The Band Assembly shall establish the rules of its proceedings, decide upon its adjournment and discipline of its members through censure for improper conduct as a Band Assembly member; or other disciplinary action, provided, however, that removal shall be governed by 3 MLBS § 24(a), but not twice for the same offense.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 13.

§ 12. Membership of Band Assembly.

The Band Assembly shall be defined as all popularly-elected or appointed members, in the case of vacancies that may be filled pursuant to the provisions of Minnesota Chippewa Tribal Election Ordinance Number 4. The Chief Executive shall not be a member of the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 14.

§ 13. Quorum.

Any three members shall constitute a quorum to transact business of the Band Assembly. The Speaker of the Assembly shall be considered as a member of the Band Assembly for the purpose of establishing a quorum.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 14.01.

§ 14. Roll Call Vote.

In all votes of the Band Assembly a roll call vote may be utilized upon the request of any Representative and their roll call vote shall be entered for the record. Otherwise, all other votes may be consensual.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 15

§ 15. Compensation.

The compensation for members of the Band Assembly shall be prescribed by Band Law provided that sufficient funds are available for said compensation. No increase in compensation shall take effect during the period for which the existing membership of the Band Assembly has been elected after July 1, 1984.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 16.

§ 16. Passage of Laws.

- (a) The Band Assembly shall conduct formal public hearings on any bill which alters, amends or repeals Titles 1, 3, 4 and 5, Chapter 1 of Title 2 and Subchapters 1 to 2 of Chapter 3 of Title 24 of the Mille Lacs Band Statutes Annotated. The Band Assembly may conduct public hearings on any or all other bills at their discretion. Public hearings shall be held in all appropriate districts of the Mille Lacs Reservation prior to the time that the Band Assembly seeks to formally act upon said bill. Additionally, each bill shall be posted in a conspicuous location for ten calendar days after said bill has been introduced at a public hearing. This provision shall not apply to any bill on which no public hearing has been held.
- (b) A majority vote of the three District Representatives shall be required for the passage of each bill.
- (c) After the formal action of the Band Assembly, no later than 72 hours after said action, each bill shall be personally delivered to the Chief Executive, who shall have five calendar days from the date of receipt to either sign the bill into law, or veto the bill and return it to the Band Assembly with a written veto message containing his objections to the bill. In the event he neither signs the bill or vetoes it, it shall become law without his signature after the expiration of five days from date of receipt of the bill.
- (d) The Clerk of the Band Assembly shall certify the date and time that each bill has been forwarded to the Chief Executive for his action. This date shall be utilized to determine the appropriate five calendar day time period found in subsection (c).
- (e) Any bill which has been vetoed and returned by the Chief Executive shall have a compromise hearing within five calendar days of the return. Failure of the Band Assembly to act within the five calendar days shall halt further action on said bill for 180 days. Should the Assembly hold a compromise hearing with the Chief Executive within the allocated time, fifteen calendar days shall be available to negotiate an agreement for the bill's passage into law. Should an agreement not be concluded within the allotted time, further action on the bill is precluded for 180 days from said date. Appropriation bills shall be excluded from the above time schedule.
- (f) An appropriation bill which has been returned by the Chief Executive shall have a compromise hearing within three calendar days of the return to the Band Assembly. Negotiations shall commence with the Chief Executive on the fourth calendar day thereafter and shall continue until a compromise has been achieved. During this time the Assembly is precluded from adjourning.
- (g) A veto by the Chief Executive is a total veto of the entire bill. Sectional vetoes shall be prohibited pursuant to the provisions of this section.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 17.

Cross References

Approval of laws by Tribal Executive Committee, *see* Const. Art. 15, § 3.

Chief Executive's powers and duties, *see* 4 MLBS § 6.

Great Lakes Indian Fish and Wildlife Compact withdrawal, *see* 2 MLBS § 1157.

Land consolidation, applicability of federal law and regulations, *see* 21 MLBS § 104.

Review of laws by Secretary of Interior, *see* Const. Art. 15, § 2.

Violation of approved Tribal Ordinance, *see* 24 MLBS § 1211.

§ 17. Annulment of Commissioner's Orders and Opinions of Solicitor General.

The Band Assembly shall have five calendar days from the date of receipt of such order or opinion to submit notice of its intent to annul any Commissioner's Order or the Opinion of the Solicitor General. Said notice shall be directed to the attention of the Chief Executive and the appropriate Commissioner and/or Solicitor General. Within ten consecutive days thereafter, the Band Assembly shall hold a hearing on the proposed annulment of the Commissioner's Order or the Opinion of the Solicitor General. At such hearing the appropriate Commissioner or the Solicitor General shall appear before the Band Assembly to justify the particular Commissioner's Order or Opinion of the Solicitor General. The Band Assembly, within five consecutive days after said hearing, may act to either accept the said Commissioner's Order or Opinion of the Solicitor General, or act to annul, in whole or in part, the particular Commissioner's Order or Opinion of the Solicitor General.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 19.

Cross References

Commissioner of Corporate Affairs, Commissioner's Orders, *see* 16 MLBS § 6.

Commissioner's Orders, *see* 4 MLBS § 7

Opinions of Solicitor General, *see* 4 MLBS § 18.

§ 18. Appropriation Bills.

Should the Band Assembly fail to pass an appropriation bill before the start of the Band's biennium or should said bill be vetoed by the Chief Executive, all fiscal operations of the Band shall cease as of midnight of the last day of the biennium, unless the Band Assembly adopts a continuing resolution prior to such time.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 20.
Band Ordinance 23-99, §§ 2, 3.

Cross References

Preparation and submission of budget requests, *see* 4 MLBS § 3.

§ 19. Fiscal Year.

The fiscal year of the Non-Removable Mille Lacs Bands of Chippewa Indians shall be October 1 through September 30 of each calendar year.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 20.01.

§ 20. Petitions of Members of Band.

The Band Assembly shall pass no law or legislative order which abridges the rights of the membership to petition the Band Assembly on matters of the Band government.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 21.

§ 21. Legislative Privilege.

No member of the Band Assembly shall be subject to suit or criminal prosecution brought against him or her for acts performed and remarks made in any session of the Band Assembly. This shall not, however, preclude judicial review in a proper case, of the constitutionality or legality of acts and decisions taken by the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 22

§ 22. Assembly Powers of Inquiry.

- (a) The Assembly shall have the power to hold Hearings of Inquiry on any issue affecting the general welfare of the Band or its members. Said power shall include the power to issue subpoenas and cause them to be served and enforced, and the power to impound records or documents that will aid the Assembly in fulfilling its responsibility to the members of the Band.
- (b) All official Hearings of Inquiry of the Band Assembly shall be held according to 4 MLBS §§ 13 and 14.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 23.

§ 23. Multi-Topic Bills.

The Band Assembly may pass any bill with many topics and said shall not be limited to one topic for any one bill.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 24.

§ 24. Joint Session of Band Assembly.

- (a) The Joint Session of the Band Assembly may be convened for the purpose of considering removal of members and officers as prescribed in Article X of the Constitution of the Minnesota Chippewa Tribe. Vacancies on the Band Assembly shall also be filled by appointment of the Joint Assembly. Appointees shall serve until the next election prescribed by the Election Ordinance Number 4. The Joint Session of the Band Assembly may be convened only by the Speaker of the Assembly. In the event that the Speaker of the Assembly shall refuse to convene the Joint Session of the Band Assembly under extraordinary circumstances, the remaining four members of the Joint Session of the Band Assembly may convene said session by presenting to the Speaker of the Assembly a notice of intent to hold said meeting and describing the time and place for said meeting.
- (b) The membership of the Joint Session of the Band Assembly shall be the Speaker of the Assembly, who shall preside, the District One Representative, the District Two Representative, the District Three Representative and the Tribal Chairman/Chief Executive.

- (c) Except as specifically authorized by any provision of the Constitution of the Minnesota Chippewa Tribe, the Joint Session of the Band Assembly shall take no action which serves to undermine or encroaches upon the distribution of the authority of the Band as found in Titles 1 to 5 of the Mille Lacs Band Statutes Annotated.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 25.

Cross References

Division of powers, *see* 2 MLBS § 3.

Functions of government authority, *see* 2 MLBS § 4.

Powers and duties of Chief Executive, *see* 4 MLBS § 6.

§ 25. Removal of Elected Officials or Appointees.

- (a) The Joint Session of the Band Assembly shall have powers of impeachment over popularly-elected officials of the Non-Removable Mille Lacs Bands of Chippewa Indians, as well as appointees of the Chief Executive as stated and defined in Title 4 of the Mille Lacs Band Statutes Annotated. The cause of removal shall be as found in Article X, Section 2, of the Constitution of the Minnesota Chippewa Tribe. All removal proceedings of the Joint Session of the Band Assembly shall be made in concert with the provisions of Article X, Section 3 of the Constitution of the Minnesota Chippewa Tribe.
- (b) On matters of removal, the Speaker of the Assembly shall have one vote and the Chief Executive shall have one vote. A two-thirds majority vote of the Joint Session of the Band Assembly shall be required to remove any popularly-elected officer of the Band.
- (c) No popularly-elected official of the Joint Session of the Band Assembly shall vote on any issue related to removal of said officer in which that officer is the topic of the removal proceedings.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 26.

Cross References

Commissioner for corporate Affairs, removal from office, *see* 16 MLBS § 3.

Consolidated Nay-Ah-Shing School Board, removal from office, *see* 9 MLBS § 6.

Court of Appeals Justices, removal for cause, *see* 5 MLBS §§ 5, 11.

District Court Judge, removal for cause, *see* 5 MLBS §§ 7, 10, 11.

Employee Credit Union, Board of Directors, terms and removal, *see* 17 MLBS § 4.
Recall of appointed officials, *see* 4 MLBS § 15.

§ 26. Elections.

The Joint Session of the Band Assembly shall have the power to call an election at any time; however, elections established under Article IV, Section 1 of the Constitution and By-Laws of the Minnesota Chippewa Tribe shall be held when directed by the two-thirds majority vote of the Tribal Executive Committee of the Minnesota Chippewa Tribe. Upon the official action of the Joint Session of the Band Assembly or the Tribal Executive Committee, the Chief Executive shall cause to have prepared and distributed an official Writ of Election.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 27.

§ 27. Legislative Orders.

- (a) The Band Assembly of the Non-Removable Mille Lacs Bands of Chippewa Indians may issue Legislative Orders on any subject matter within the Legislative Branch of government pursuant to authority conferred by this Title and the Constitution of the Minnesota Chippewa Tribe. Any said Legislative Order shall be authorized by a majority vote of the members of the Band Assembly. All members of the Band Assembly, as well as the Speaker of the Assembly, shall affix their signatures to any said Legislative Order, however, the failure of one or two members of the Band Assembly to countersign any Legislative Order shall not invalidate the Order provided it is passed by a majority vote of the Band Assembly under its rules of procedure.
- (b) All said Legislative Orders shall be consecutively numbered and bear the signature of the Solicitor General as to form and execution and have the official seal of the Band affixed thereto.
- (c) The Clerk of the Band Assembly shall be responsible for safe keeping of original copies of all Legislative Orders. All Legislative Orders shall have the full force of law of the Mille Lacs Bands until amended or repealed. The Clerk of the Band Assembly shall produce and distribute all Legislative Orders within 24 hours after formal enactment of the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 28.

§ 28. Style of Laws.

The style of laws of the Non-Removable Mille Lacs Bands of Chippewa Indians shall be: "Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Bands of Chippewa Indians." And no laws shall be enacted except by bill.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 29.

§ 29. Interpretation of Title.

Should there be any doubt as to the proper interpretation of any part of this title, or of 2 MLBS Chapter 1, the Speaker of the Assembly or the Band Assembly as an entity may submit such question to the Solicitor General, who shall give his or her written Opinion thereon, and such Opinion shall be binding unless annulled in whole or in part, by the Court of Central Jurisdiction, or amended by the Band Assembly pursuant to the enactment of the law. The Exterior Legal Counsel of the Band shall, on request, assist the Solicitor General in the proper interpretation of this or any other Band statute upon official request of the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 32.

Cross References

Legal counsel, *see* 4 MLBS § 16.

§ 30. Construction of Title.

The Solicitor General or the Exterior Legal Counsel and the Court of Central Jurisdiction, whichever is applicable, shall liberally construe the provisions of this title, or of 2 MLBS Chapter 1, so as to provide for the full force and effect of the purposes therein stated.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 33.

TITLE 4 - EXECUTIVE BRANCH

Section

1. **Definitions.**
2. **Executive Political Authority.**
3. **Powers and Duties of the Executive Branch.**
4. **Executive Officers.**
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24. **Executive Privilege and Immunity.**
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26. **Construction of Title.**

Historical and Statutory Notes

The Preamble of Band Statute 1142-MLC-3 provides: "WHEREAS, in 1981 the Non-Removable Mille Lacs Band of Chippewa Indians, in a historic step, adopted a form of government based on the principal of division of powers, and,

"WHEREAS, that form of government has proven to be highly satisfactory, but experience with the large body of law which was necessary to establish the system has revealed a number of flaws and ambiguities and,

"WHEREAS, The Band Assembly has determined to improve Band government of adopting an entire Code of government, revising and replacing the former Code, NOW

THEREFORE, IT IS ENACTED BY THE BAND ASSEMBLY:"

Band Statute 1142-MLC-3, §§ I and 2 provide:

"Section 1. Purpose. The purpose of this act is to promote the general welfare of the Non-Removable Mille Lacs Bands of Chippewa Indians and its members by establishing duties, purposes and procedures for the conduct of domestic and external affairs of the Band by a form of government based upon the principle of division of powers. This statute is enacted by the authority vested in the Mille Lacs Reservation Business Committee under Article VI, Section 1 of the Constitution of the Minnesota Chippewa Tribe.

"Section 2. Scope of Amending Provision. The provision of Band Statutes 1001-MLC-1, 1008-MLC-1, 1032-MLC-1, 1033-MLC-1, 1039-MLC-1 are hereby repealed in their entirety and replaced by the provisions of this act, except that:

"Section 2.01. The provisions of Band Statute 1032-MLC-1, Section 28, relating to the authorities of the Commissioner of Corporate Affairs shall be transferred and hereinafter referenced by Band Statute 1077-MLC-16, Section 5.

"Section 2.02. The provisions of Band Statute 1032-MLC-1, Section 29, relating to the authorities of the Commissioner of Natural Resources shall be transferred and hereinafter referenced by Band Statute 1030-MLC-22, Section 32."

The Title of Band Ordinance 23-99 is "An Ordinance amending the budgeting period of the Mille Lacs Band of Ojibwe and repealing and replacing 4 MLBS §3(d), 4 MLBS §10(e), 3 MLBS §18 and 5 MLBS 114(e) of the Mille Lacs Band Statutes Annotated."

The Preamble of Band Ordinance 23-99 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purposes of amending the body of law governing the Band's budgeting period. The Band Assembly determines that it is in the Band's best interest to appropriate Band funds for a two-year budgeting period."

Band Ordinance 23-99, §§ 1 & 2 provide:

"Section 1. Purpose "This Act is intended to amend the body of law governing the budgeting cycle of the Mille Lacs Band of Ojibwe. The purpose of this Act is to provide a process whereby the Mille Lacs Band of Ojibwe appropriates funds based on a two-year time period.

"Section 2. Repeal "3 MLBAS §18, 4 MLBS §3(d), 4 MLBS §10(e) and 5 MLBS §114(e) of the Mille Lacs Band Statutes Annotated is hereby repealed and replaced in its entirety."

Cross References

Band government identification cards, *see* 22 MLBS § 308.

Bribery, *see* 24 MLBS § 1203.

Consolidated Nay-Ah-Shing School Board as independent subdivision of Executive Branch, *see* 9 MLBS § 1.

§ 1. Definitions.

The following words shall have the meanings herein subscribed:

- (a) The "**Band**" shall mean the Non-Removable Mille Lacs Bands of Chippewa Indians.
- (b) The "**Band Statute**" shall mean the codified laws of the Non-Removable Mille Lacs Bands of Chippewa Indians
- (c) "**Commissions**" shall mean the legal papers which authorize an officer of the Non-Removable Mille Lacs Bands of Chippewa Indians to hold official office in the governmental structure of the Band.
- (d) The "**Constitution**" shall mean the Constitution of the Minnesota Chippewa Tribe.
- (e) "**Domestic Affairs**" shall mean the internal concerns of the five constituent Bands which comprise the Non-Removable Mille Lacs Bands of Chippewa Indians and their people.
- (f) "**External Affairs**" shall mean the matters of trade, commerce and interaction and general relations with governments, corporations, Indian tribes or bands or citizens of the United States of America.
- (g) "**Letters of Credence**" shall mean the legal papers which authorize an officer of the Non-Removable Mille Lacs Band of Chippewa Indians to conduct external affairs on behalf of the Band.
- (h) The "**Members**" shall mean the enrolled members of the Non-Removable Mille Lacs Bands of Chippewa Indians.
- (i) The "**People**" shall mean the enrolled members of the Non-Removable Mille Lacs Bands of Chippewa Indians.
- (j) The "**Tribe**" shall mean the Minnesota Chippewa Tribe.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 28.

§ 2. Executive Political Authority.

All executive political authority of the Non-Removable Mille Lacs Bands of Chippewa

Indians shall be vested in the Executive Branch of government. The leader of the Executive Branch shall be the popularly-elected tribal chairman, whose title shall be Chief Executive. The Chief Executive is the officer referred to in the Constitution as the Chairman. Unless otherwise specified by Band Statute, all Executive Branch authority shall be exercised by the Chief Executive.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 3.

Cross References

Chairman, Reservation Business Committee, *see* Const. Art. 3, § 2.

Division of powers, *see* 2 MLBS § 3.

Functions of government authority, *see* 2 MLBS § 4.

§ 3. Powers and Duties of the Executive Branch.

It shall be the authority and duty of the Executive Branch to see that the laws of the Band are faithfully executed. The Executive Branch shall have power to:

- (a) Conduct relations with all other governments and their political subdivisions.
- (b) Negotiate and execute agreements, contracts, cooperative and reciprocity agreements, memoranda of understanding, on behalf of the Band, subject to ratification by the Band Assembly wherever required by Band statute.
- (c) Administer contracts and grants, cooperative and reciprocity agreements and memoranda of understanding, under the terms and conditions contained therein.
- (d) Prepare biennial budget requests for all executive functions and submit the same to the Band Assembly for appropriation no later than September 1 of each odd numbered year.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 4.

Band Ordinance 23-99, §§ 2, 4.

Cross References

Appropriation bills prior to end of fiscal year, *see* 3 MLBS § 18.

Fiscal year, *see* 3 MLBS § 19.

Ratification of agreements by Band Assembly, *see* 3 MLBS § 2.

§ 4. Executive Officers.

The executive officers of the Non-Removable Mille Lacs Bands of Chippewa Indians shall consist of the Chief Executive, Commissioner of Administration, Assistant Commissioner of Administration, Commissioner of Natural Resources, Commissioner of Education, Commissioner of Corporate Affairs, the Commissioner of Human Services, and Commissioner of Community Development.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 5.
Band Ordinance 20-97, § 1.

Cross References

Education department programs, delineation of responsibility, *see* Exec. Order 108-93.
Efficient operation of Band government and employment of Band members, *see* Exec. Order 104-92.
Vehicles owned by Band, maintenance and log books, *see* Exec. Order 109-93.

§ 5. Terms of Office.

The term of office of the Chief Executive shall be the term prescribed for the Chairman of the Reservation Business Committee in Article IV, § 3 of the Constitution. The terms of office of the other executive officers shall be four years in duration commencing July 1, 1985.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 6.

§ 6. Powers and Duties of Chief Executive.

The Chief Executive shall have the following authority in exercising the executive powers of Band government:

- (a) To faithfully and impartially execute the laws, judicial determinations, orders and resolutions of the Band.

- (b) To appoint wherever authorized by Band Statute, executive officers, judges, heads of commissions, boards or authorities, legal and financial counsel and to make appointments to fill any vacancy in any office as authorized by Band Statute and subject to confirmation by the Band Assembly.
- (c) To conduct external relations with all other governments and their political subdivisions.
- (d) To recommend agreements, contracts, cooperative and reciprocity agreements and memoranda of understandings to the Band Assembly for ratification.
- (e) To issue proclamations and executive orders on any subject matter within the Executive Branch of government pursuant to the authority conferred by Band Statute. Such written statements shall be of uniform form and shall be numbered consecutively and/or effective expiration.
- (f) To act as the custodian of all Band property.
- (g) To appoint executive committees, which may hold official hearings to assist the Chief Executive in conducting the duties of the office. Such executive committees shall have the power to issue subpoenas and cause them to be served and enforced consistent with the provisions of due process. All hearings of such committees shall be held in accordance with 4 MLBS §§ 13 and 14.
- (h) To sit in the Joint Session of the Band Assembly as provided by 3 MLBS § 24.
- (i) To present to the Band Assembly an annual State of the Band Address on the second Tuesday of January of each calendar year. The Chief Executive shall, from time to time, give information to the Band Assembly and recommend to their consideration such measures as he/she shall judge necessary and expedient.
- (j) To call general and special elections upon the prior authorization of the Joint Session of the Band Assembly pursuant to the provisions of Article IV, § 1 of the Constitution.
- (k) To issue pardons and commutations of sentences to any individual convicted of a crime in the Court of Central Jurisdiction under such regulations and restrictions as may be prescribed by Band statute.
- (l) To approve or veto any proposed law which shall have passed the Band Assembly pursuant to the regulations prescribed by 3 MLBS § 16(c).
- (m) To make rules and policies consistent with the provisions of Band statute.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 7.

Cross References

Capital Improvements Authority Board of Commissioners, *see* 14 MLBS § 2.
Commissioner of Corporate Affairs, appointment, *see* 16 MLBS § 2.
Consolidated Nay-Ah-Shing School Board, veto authority of Chief Executive, *see* 9 MLBS § 28.
Corporate Commission, Board composition, *see* 16 MLBS § 103.
Environmental Protection Commission, selection and terms of office, *see* 11 MLBS § 3.
Exemption from provisions of personnel manual, *see* 6 MLBS § 8.
Government facilities, utilization and security, *see* Exec. Order 033.
Housing Authority Board of Commissioners, appointment, *see* 12 MLBS § 4.
Procurement, responsibilities of Chief Executive, *see* 7 MLBS § 104.
Public Works Commission Board of Supervisors, *see* 13 MLBS § 2.
Public Works Commission, enforcement of regulations, *see* 13 MLBS § 15.
Ratification of agreements, contracts, etc., *see* 3 MLBS § 2.
Review of proposed procurement actions, *see* 7 MLBS § 6.
Sentence, criminal procedure, *see* 24 MLBS § 4251 et seq.
Vehicles owned by Band, maintenance and log books, *see* Exec. Order 109-93.
Violation of Executive Orders, *see* 24 MLBS § 1212.

§ 7. Powers and Duties of Executive Officers.

The executive officers shall have the following general authority in exercising subject matter authority conferred by Band statute:

- (a) To faithfully and impartially execute the laws of the Band and the policies of the Executive Branch of government.
- (b) To conduct external relations with their counterparts in the political subdivisions of other governments, pursuant to the prior authorization of the Chief Executive.
- (c) To authorize the expenditure of all appropriated funds within their subject matter jurisdiction.
- (d) To regulate the performance of their duties by all persons employed within their area of subject matter jurisdiction.
- (e) To advise the Chief Executive on all matters related to their subject matter jurisdiction, be it external or domestic.

- (f) To recommend the reorganization of any department within their subject matter jurisdiction as they may deem advisable in the interests of economy or efficiency.
- (g) To prescribe procedures for the development of policy in the area under their respective jurisdiction.
- (h) To issue commissioner's orders on any subject matter within their jurisdiction pursuant to the authority conferred by Band statute. Such written statements shall be uniform format, numbered consecutively and have effective and expiration dates affixed thereto.
- (i) To take such measures as are deemed necessary to prevent any action which threatens the well-being of programs within their respective jurisdiction, by the issuance of a formal commissioner's order.
- (j) To exercise any and all authority conferred pursuant to the provisions of any other Band statute.
- (k) To perform any duties as may be lawfully assigned by the Chief Executive.
- (l) To represent the interests of the Chief Executive in matters within their respective subject matter jurisdiction before the Band Assembly.
- (m) To represent the interests of the Executive Branch of Band government before any exterior governmental body as authorized and directed by the Chief Executive. No such representation shall occur by any commissioner unless the said commissioner shall present to the exterior governmental body his or her official letters of credence.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 8.

Cross References

Annulment of Commissioner's Orders, *see* 3 MLBS § 17.

Commissioner of Finance, general powers and duties, *see* 22 MLBS § 104.

Education department programs, delineation of responsibility, *see* Exec. Order 108-93.

Efficient operation of Band government and employment of Band members, *see* Exec. Order 104-92.

Great Lakes Indian Fish and Wildlife Compact, commissioner's orders, *see* 2 MLBS § 1160.

Vehicles owned by Band, maintenance and log books, *see* Exec. Order 109-93.

Violation of Commissioner's Orders, *see* 24 MLBS § 1212.

§ 8. Creation, Powers and Duties of Administration Policy Board.

The Band Assembly hereby creates within the Executive Branch of Band government an entity which shall be known as the Administration Policy Board. The Administration Policy Board shall have the following powers, duties and responsibilities:

- (a) To employ and contract with any individual in fulfilling the mandates of the Executive Branch of government.
- (b) To administer through lawful activities all grants and contracts received by the Non-Removable Mille Lacs Band of Chippewa Indians for the benefit of the general welfare of the people of the Band. Such power to administrate the said grants and contracts shall be limited to acts which affect all grants and contracts regardless of particular subject matter. In the event that any particular administrative order shall affect only one subject matter, the authority of the commissioner for that subject matter shall prevail.
- (c) To authorize the submission of proposals to any exterior entity for authorized grants and contracts which will benefit the general welfare of the people.
- (d) To regulate the performance of all employees, including the hiring and dismissal of any employee, pursuant to the provisions of Band statute regulating civil service employees.
- (e) To insure the lawful activities of any grant or contract within the Executive Branch of government.
- (f) To recommend any measure to the Band Assembly for their consideration, upon the advice and consent of the Chief Executive.
- (g) To negotiate all contracts and grants on behalf of the Executive Branch of Band government. All such negotiated contracts shall be subject to ratification by the Band Assembly.
- (h) To perform all duties as assigned by the Chief Executive.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 9.

Cross References

Employment Rights Program, *see* 18 MLBS § 401 et seq.

Government employees, *see* 6 MLBS § 1 et seq.

§ 9. Membership and Meetings of Administration Policy Board.

- (a) The Administration Policy Board shall consist of the following Executive Officers: the Commissioner of Administration, the Assistant Commissioner of Administration, the Commissioner of Natural Resources, the Commissioner of Education, the Commissioner of Human Services, and the Commissioner of Community Development. A quorum of four members of the Administration Policy Board shall be required for the transaction of any official business. In the event that the Administration Policy Board is unable to perform its duties due to lack of quorum, the Commissioner of Administration may issue a commissioner's order to implement any said matter. Any said commissioner's order issued under this circumstance, shall be valid only until the next official meeting of the Administration Policy Board.
- (b) The Administration Policy Board shall be chaired by the Commissioner of Administration. The Commissioner of Administration shall prepare an agenda for the Administration Policy Board upon the advice and consent of the Chief Executive.
- (c) The Administration Policy Board shall convene on the second Thursday of each month. Additional meetings may be held at any time thereafter upon notification by the Commissioner of Administration.
- (d) All meetings of the Administration Policy Board shall be recorded and transcribed into writing. The minutes of the Administration Policy Board shall constitute prima facie evidence of the facts stated therein before any action in the Court of Central Jurisdiction or any other court of competent jurisdiction.
- (e) Within five days after the convening of the Administration Policy Board, the approved official record of said meeting shall be transmitted to the Speaker of the Assembly who shall in turn present said record to the Band Assembly.
- (f) The Chief Executive shall have veto authority over any action of the Administration Policy Board.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, §10.
Band Ordinance 20-97, § 2.

§ 10. Powers and Duties of Commissioner of Administration.

The Commissioner of Administration shall act as the Chief of Staff within the Executive Branch of Band Government. The Commissioner of Administration shall have the following authority:

- (a) To act in the absence of any other commissioner.
- (b) To act by and with the advice and consent of the Chief Executive.
- (c) To sign by authorization all vouchers and expenditures of appropriated funds of the Executive Branch pursuant to the provisions of Band statute.
- (d) To represent the interests of the Chief Executive in matters before the Band Assembly upon the direction of the Chief Executive.
- (e) To be responsible for the preparation of the biennial budget for the Executive Branch of Band government and for the submission of said budget to the Band Assembly no later than September 1 of each odd numbered year.
- (f) To exercise all authority conferred pursuant to the provisions of any Band statute and any authority conferred by the Chief Executive.
- (g) To delegate to the Assistant Commissioner of Administration any of the authority contained herein or in 4 MLBS § 7 during the absence of the Commissioner of Administration or other executive officer.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 11.
Band Ordinance 23-99, §§ 2, 5.

§ 11. Executive Committees.

The Chief Executive shall authorize, appoint and empower all executive committees pursuant to the issuance of an Executive Order.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 12.04.

§ 12. Executive Hearings.

- (a) The Chief Executive is authorized to hold executive hearings for the following purposes:
 - (1) The making of rules or policies consistent with the provisions of Band statute.

- (2) To adjudicate matters in controversy.
 - (3) To investigate and inquire into matters affecting the general welfare of the Band or its organs of government.
- (b) All executive hearings shall be held in accordance with 4 MLBS § 13.
 - (c) The powers of subpoena shall be available to any executive hearing of inquiry. The executive hearing officer may issue subpoenas and cause them to be served and enforced. The opportunity to quash any subpoena for cause shall be available pursuant to a petition duly filed with the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 12.

§ 13. Procedures for Conduct of Hearings of Inquiry.

- (a) All executive hearings shall be conducted by a hearing officer appointed by the Chief Executive. The hearing officer shall be a justice of the Court of Central Jurisdiction or a suitable person knowledgeable in law and the Mille Lacs judicial philosophy.
- (b) The hearing officer shall conduct the inquiry in a manner which is consistent with the Mille Lacs judicial philosophy of a search for truth and justice in the spirit of the Mille Lacs Bands. To that end the hearing officer shall conduct every session of the hearing as the principal investigator, questioning witnesses, calling for evidence to be produced and advising the parties and their legal representatives of the issues he is concerned with and inviting their views and assistance.
- (c) Following questioning by the hearing officer the witness may make additional comments within the limits of relevancy and propriety adjudged by the hearing officer. Any other party or legal representative may then question the witnesses. Witnesses may be recalled at the discretion of the hearing officer if additional questions are raised.
- (d) Hearings are to be held upon at least three days' advance notice to the parties. Continuance shall be granted for good cause. Hearings shall be informal and there may be as many sessions as deemed necessary by the hearing officer to enable him to review all the evidence and hear the contentions of the parties.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 13.

Cross References

Band Assembly hearings of inquiry, *see* 3 MLBS § 22.

Mille Lacs judicial philosophy, *see* 24 MLBS § 2002.

§ 14. Decisions or Orders After Hearings of Inquiry.

The decisions or orders of the hearing panel, whether interim or final shall be in writing and shall contain the following:

- (a) names of the parties;
- (b) claims made by the parties;
- (c) names of witnesses heard and documents or other evidence reviewed by the hearing officer;
- (d) the questions to be decided;
- (e) the facts found to be established by the evidence;
- (f) the law which governs the case; and
- (g) the decision of the hearing officer including, whether any wrong or error was committed and if so, what remedy is being given.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 13.04.

Cross References

Band Assembly hearings of inquiry, *see* 3 MLBS § 22.

§ 15. Recall of Appointed Officials.

- (a) The Chief Executive upon receiving the two-thirds majority vote of the Joint Session of the Band Assembly, shall suspend the commission of any appointed officer, for just cause subject to final determination as provided for in subsection (e). Upon the suspension of any commission the rights, privileges and responsibilities to office are temporarily suspended.
- (b) The Chief Executive shall within 72 hours after receipt of entry of findings, notify the Speaker of the Assembly for the purpose of convening the Joint Session of the Band Assembly.
- (c) The Joint Session of the Band Assembly shall convene within 10 consecutive days after receipt of the decision of the hearing officer for the purpose of entering judgment for the discipline or removal of the officer who is the subject of the proceeding.
- (d) The officer shall appear before the Joint Session of the Band Assembly to enter into the record any final comments within the limits of relevancy and propriety.
- (e) The Joint Session of the Band Assembly shall by two-thirds majority vote render its final decision on the recall of the appointed officer. No appeal from the final decision of the Joint Session of the Band Assembly shall be available.
- (f) In the event, the hearing officer rules in favor of the appointed officer, the Chief Executive shall reinstate the commission of the appointed officer within 72 hours after entry of findings and conclusions of law.
- (g) For purposes of proceedings to recall an appointed officer, just cause shall mean:
 - (1) any alleged violation of the Code of Ethics of the Non-Removable Mille Lacs Bands of Chippewa Indians or allegations of facts which, if true, would constitute malfeasance, misfeasance or nonfeasance in office or any other violation of the Code of Ethics;
 - (2) the issuance of formal criminal charges against an appointed officer by any court of competent jurisdiction;
 - (3) a violation of the oath of office;
 - (4) the unauthorized release of the privileged communications of the Band either written or oral.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 14.

Cross References

Benefits, effect of removal, *see* 6 MLBS § 1006.

Capital Improvements Authority, removal of Board members, *see* 14 MLBS § 3.

Code of ethics, establishment, *see* 2 MLBS § 9.

Housing Authority, removal of Board members, *see* 12 MLBS § 6.

Housing Authority projects, disclosure of interests, *see* 12 MLBS § 25.

Public Works Commission Board of Supervisors, *see* 13 MLBS § 2.

Removal of elected officials or appointees, *see* 3 MLBS § 25.

§ 16. Legal Counsel.

The Non-Removable Mille Lacs Band of Chippewa Indians shall have both Interior and Exterior legal counsel:

- (a) The Interior Legal Counsel of the Band shall be known as the Solicitor General. The duly-appointed and confirmed Solicitor General shall be a member of the bar association of the Non-Removable Mille Lacs Bands of Chippewa Indians and shall represent the interest of the Executive Branch and the Band Assembly in all matters before the Court of Central Jurisdiction.
- (b) The Exterior Legal Counsel in and for the Non-Removable Mille Lacs Bands of Chippewa Indians shall be a lawyer and/or a legal firm of the choice of the Chief Executive upon the advice and consent of the Band Assembly. The said Exterior Legal Counsel in and for the Band shall be a person or persons who is/are licensed to practice law in any state court of the United States or in any federal court of the United States. The Exterior Legal Counsel shall be employed pursuant to the provisions of a contract approved by the Secretary of Interior pursuant to the provisions of 25 U.S.C. § 81. The Exterior Legal Counsel may represent the interests of the Non-Removable Mille Lacs bands of Chippewa Indians in any matter before any court including the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1141-MLC-2, § 31.

§ 17. Appointment of Solicitor General.

- (a) The Chief Executive shall nominate and forward to the Band Assembly for confirmation the name of a competent and duly qualified individual of high honor and integrity to serve as the Solicitor General of the Non-Removable Mille Lacs Bands of Chippewa Indians.
- (b) The Solicitor General shall serve a four-year term of office commencing May 1, 1987, and on this date every four years hence.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 15.

Cross References

Department of Justice members, *see* 24 MLBS § 1053.

§ 18. Duties of Solicitor General.

The Solicitor General shall have the following responsibilities, obligations and authority on behalf of the Non-Removable Mille Lacs Bands of Chippewa Indians:

- (a) To represent the interests of the Non-Removable Mille Lacs Bands of Chippewa Indians in all legal proceedings in the Court of Central Jurisdiction and all other exterior courts of competent jurisdiction.
- (b) To independently uphold the laws and executive, legislative, secretarial and commissioner's orders, judicial determinations, policies and the terms of domestic assistance grants and contracts of the Band when consistent with the Constitution of the Minnesota Chippewa Tribe and the laws of the Non-Removable Mille Lacs Bands of Chippewa Indians.
- (c) To initiate and defend any legal action necessary, that is or can be brought in or against the name of the Non-Removable Mille Lacs Bands of Chippewa Indians, to uphold the provisions of the Constitution of the Minnesota Chippewa Tribe and the laws of the Band or to protect the rights of the enrolled members of the Band.
- (d) To interpret all laws and executive, legislative, secretarial and commissioner's orders and policies on behalf of the Non-Removable Mille Lacs Bands of Chippewa Indians.

- (1) All said interpretations shall be titled in the form of Opinion of the Solicitor General, be consecutively numbered, dated as to the date of issuance, and contain the official seal of the Band.
- (2) All said opinions of the Solicitor General shall have the force of law and shall be binding until annulled by the Court of Central Jurisdiction or amended pursuant to legislative order of the Band Assembly.
- (e) To aid in drafting public bills, resolutions, orders, policies or amendments thereto on the request of the Chief Executive, Speaker of the Assembly or the Chief Justice. To certify to the ordinances of Band government and codify said ordinances into Band Statutes.
- (f) To advise and assist the Chief Executive, the Band Assembly or the Court of Central Jurisdiction in the achievement of a clear, faithful, and coherent expression of the laws and policies of the Non-Removable Mille Lacs Bands of Chippewa Indians as prescribed by the standards of the office of Solicitor General in 4 MLBS § 19.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 16.

Cross References

Annulment of Solicitor General opinions, *see* 3 MLBS §17.
 Commercial practices, representation by Solicitor General, *see* 18 MLBS § 7.
 Consolidated Nay-Ah-Shing School Board, Solicitor General obligations, *see* 9 MLBS § 30.
 Department of Justice, powers and duties of Solicitor General, *see* 24 MLBS § 1054.
 Employee Credit Union, representation by Solicitor General, *see* 17 MLBS § 19.
 Environmental protection, Civil actions, *see* 11 MLBS § 17 et seq.
 Liberal construction of law, *see* 11 MLBS § 31.
 Great Lakes Indian Fish and Wildlife Compact, obligations of Solicitor General, *see* 2 MLBS § 1108.
 Human Resources Division cases, obligations of Solicitor General, *see* 8 MLBS § 17.
 Motor vehicle licensing law, implementation by Solicitor General, *see* 19 MLBS § 1.
 Motor vehicles, representation by Solicitor General, *see* 19 MLBS § 14. Tobacco products, revocation, cancellation or suspension of license of distributor or retailer, *see* 22 MLBS § 211.
 Use of information, commercial practices, *see* 18 MLBS § 9.
 Violation of Solicitor General's Opinions, *see* 24 MLBS § 1212.

§ 19. Legal Standards of Office of Solicitor General.

- (a) The Solicitor General shall have the duty of advocating whatever position he concludes is required by Band Statute in the event of any conflicts within the Executive and or between the Executive and Legislative branches of Band

government. The Solicitor General shall maintain an attorney-client relationship with respect to all communications between him/her and the Chief Executive and any member of the Band Assembly.

- (b) The Solicitor General's first duty under law is to uphold the laws of the Non-Removable Mille Lacs Bands of Chippewa Indians and the confidentiality of communications between the Chief Executive and members of the Band Assembly and the Solicitor General.
- (c) In the event that litigation or representation in litigation is requested by any executive officer, the Solicitor General shall notify the Speaker of the Assembly and afford him/her an opportunity to object to the legal service requested. The Speaker of the Assembly shall have five days from the date of notification to respond. In the event that the Speaker shall object to the request or fail to respond, the Solicitor General shall independently consider the merits of the issue based solely upon the applicable laws of the Band and notify both parties as to his/her representation decision.
- (d) In the event that litigation or representation in litigation is requested by the Speaker of the Band Assembly, the Solicitor General shall notify the Chief Executive and afford him/her an opportunity to object to the legal service request. The Chief Executive shall have five days from the date of notification to respond. In the event that the Chief Executive shall object to the request, or fail to respond, the Solicitor General shall independently consider the merits of the issue based solely upon the applicable laws of the Band and notify both parties as to his/her representation decision.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 17.

§ 20. Legal Responsibilities of Solicitor General in Capacity of Prosecutor.

The Solicitor General in a criminal case shall:

- (a) make no prosecution that he knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, a legal officer and has been given reasonable opportunity to obtain a legal officer;
- (c) not seek to obtain from an unrepresented accused a waiver of important civil rights, including procedural rights;

- (d) make timely disclosure to the legal officer for the accused all evidence of information known by the Solicitor General that tends to negate the guilt of the accused or mitigates the offense and, in connection with sentencing, disclose to the legal officer for the accused and the Court all unprivileged mitigating circumstances known to the Solicitor General.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 18.

Cross References

Criminal procedure, *see* 24 MLBS § 4001 et seq.

Equal protection and due process of law, *see* 1 MLBS § 8.

Individual rights during judicial proceedings, *see* 1 MLBS § 6.

Self-incrimination in criminal proceeding, *see* 1 MLBS § 4.

§ 21. Immunity of Solicitor General.

The Solicitor General shall be immune from civil liability arising from the true and faithful performance of his/her lawful acts and deeds in the Court of Central Jurisdiction or any other court of competent jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 19.

Cross References

Suits against Band officials, *see* 24 MLBS § 701.

§ 22. Office Commissions.

No appointed and confirmed officer of the Non-Removable Mille Lacs Bands of Chippewa Indians shall exercise any powers of the office to which they were appointed unless and until they have received an official commission executed by the Chief Executive and witnessed by the Speaker of the Assembly. All said commissions shall state the date of expiration of the commission.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 20.

§ 23. Letters of Credence.

No appointed officers of the Executive Branch shall represent to any other person the interests of the Non-Removable Mille Lacs Bands of Chippewa Indians, unless he shall first exhibit a letter of credence executed by the Chief Executive and witnessed by the Speaker of the Assembly. All said letters of credence shall state the date of expiration.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 21.

Cross References

Letters of credence, *see* Exec. Orders 031, 032.

§ 24. Executive Privilege and Immunity.

- (a) The Chief Executive shall be immune from liability brought against him or her for acts performed or remarks made or spoken in the lawful conduct of Band affairs. Proceedings of confidential meetings with his advisors and subordinates and confidential communications of the Chief Executive are privileged and not subject to disclosure. This shall not, however, preclude judicial review, in the proper case, of the constitutionality or legality of acts and decisions taken by the Chief Executive nor shall it preclude any proper removal hearing in accordance with the provisions of Article X of the Constitution.
- (b) Executive privilege shall not extend to any appointed officer of the Non-Removable Mille Lacs Bands of Chippewa Indians. Such officers shall however, be immune from personal liability for acts performed in good faith in the scope of their official duties.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 22.

Cross Reference

Suits against Band officials, *see* 24 MLBS § 701.

§ 25. Interpretation of Title.

Should there be any doubt as to the proper interpretation of any part of this title, the Chief Executive may submit such question to the Solicitor General who shall give his/her written opinion thereon, and any such opinion shall be binding unless annulled, in whole or part, by the Court of Central Jurisdiction or amended by the Band Assembly pursuant to enactment of law.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 23.

§ 26. Construction of Title.

The Solicitor General and the Court of Central Jurisdiction shall liberally construe the provisions of this title so as to provide for achievement of the purposes thereof.

Historical and Statutory Notes

Source:

Band Statute 1142-MLC-3, § 24.

TITLE 5 - JUDICIAL BRANCH

Chapter

1. Judicial Organization

2. Judicial Authority and Jurisdiction

Section

1

101

Historical and Statutory Notes

Band Statute 1303-MLC-4, §§ 1-3, 9.03 provide:

"Section 1. Purpose. The Purpose of this Act is to promote the general welfare, preserve and maintain justice and to protect the rights of all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians consistent with a judicial philosophy of a search for truth and justice. This

statute is enacted by the inherent aboriginal and sovereign rights of the members of the Non-Removable Mille Lacs Band of Chippewa Indians to be self-governing since time-immemorial and by the authority vested in the Mille Lacs Reservation Business Committee under Article I, Section 3, Article VI, Sections 1 and 2, and Article XIII of the Constitution of the Minnesota Chippewa Tribe.

"Section 2. Scope of Amending Provision. Band Statute 1143-MLC-4 is hereby repealed in its entirety and replaced by the provisions of this statute.

"Section 3. Severability. If any provision of this Act is held invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid provision and to this end, the provisions of this Band Statute shall be severable."

"Section 9.03 Sovereign Immunity. Nothing contained in this act shall be deemed or construed to be a waiver of sovereign immunity by the Non-Removable Mille Lacs Band of Chippewa Indians."

The Title of Band Ordinance 23-99 is "An Ordinance amending the budgeting period of the Mille Lacs Band of Ojibwe and repealing and replacing 4 MLBS § 3(d), 4 MLBS § 10(e), 3 MLBS §§ 18, and 5 MLBS § 114(e) of the Mille Lacs Band Statutes Annotated."

The Preamble of Band Ordinance 23-99 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purposes of amending the body of law governing the Band's budgeting period. The Band Assembly determines that it is in the Band's best interest to appropriate Band funds for a two-year budgeting period." Band Ordinance 23-99, §§ 1, 2 provide:

"Section 1. Purpose

"This Act is intended to amend the body of law governing the budgeting cycle of the Mille Lacs Band of Ojibwe. The purpose of this Act is to provide a process whereby the Mille Lacs Band of Ojibwe appropriates funds based on a two-year time period.

"Section 2. Repeal

"3 MLBS § 18, 4 MLBS § 3(d), 4 MLBS § 10(e), and 5 MLBS § 114(e) of the Mille Lacs Band Statutes Annotated is hereby repealed and replaced in its entirety."

The Title of Band Ordinance 39-19 is "An Ordinance amending 5 MLBSA §§ 4, 7, & 10 to provide the Judicial Branch the authority to increase the composition of the Judiciary with the addition of Associate District Court Judges whom shall be held to the same statutory requirements as the District Court Judge. The Bill also amends the requirement that all District Court Judges be members in good standing of a state bar.

The preamble of Band Ordinance 39-19 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe, for the purpose of amending 5 MLBSA § 4, 7, & 10 to provide the Judicial Branch the authority to increase the composition of the Judiciary with the addition of Associate District Court Judges whom shall be held to the same statutory requirements as the District Court Judge. The Bill also amends the requirement that all District Court Judges be members in good standing of a state bar."

"The statutory requirements mandated in 3 MLBSA §16(a) including the requirement that the Band Assembly 'conduct formal hearings on any bill which alters, amends, or repeals Title 1, 3, 4, and 5. Chapter 1 of Title 2 and Subchapter I to III of Chapter 3 of Title 24 of the Mille Lacs Band Statutes Annotated' have been fulfilled and the Band Assembly may take formal action on this bill."

Cross References

Band government identification cards, *see* 22 MLBS § 308.
Bribery, *see* 24 MLBS § 1203.

CHAPTER 1

JUDICIAL ORGANIZATION

Section

1. **Court of Central Jurisdiction; Composition.**
2. **Court of Central Jurisdiction; Constituent Courts and Leadership.**
3. **Composition of Court of Appeals.**
4. **Composition of District Court.**
5. **Appointment and Terms of Office of Justices.**
6. **Chief Justice; Election and Term of Office.**
7. **District Court Judge and Associate Judges; Appointments and Term of Office.**
8. **Vacancy in Court of Central Jurisdiction.**
9. **Qualifications of Justices.**
10. **Qualifications of District Judge and Associate Judges.**
11. **Removal or Discipline of Justices and Judges.**
12. **Salaries of Justices.**
13. **Official Seal.**
14. **Convening Schedule of District Court.**
15. **Fines and Bonds.**

Cross References

Exemption from personnel manual provisions, *see* 6 MLBS § 8.

§ 1. Court of Central Jurisdiction; Composition.

All judicial authority of the Non-Removable Mille Lacs Band of Chippewa Indians shall be vested in the Court of Central Jurisdiction. The Court of Central Jurisdiction shall be composed of the Justices and Judges of the Court of Central Jurisdiction, the Clerk of Court, Court Administrator and other judicial employees.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 7.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 3.

Cross References

Court staff, *see* 5 MLBS § 107.

§ 2. Court of Central Jurisdiction; Constituent Courts and Leadership.

The Court of Central Jurisdiction shall consist of the District Court and the Court of Appeals of the Non-Removable Mille Lacs Band of Chippewa Indians and as otherwise provided for by law and shall be led by the Chief Justice who shall serve as the leader of the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 7.01.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 3.

§ 3. Composition of Court of Appeals.

The Court of Appeals shall be composed of one Chief Justice and two Associate Justices.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 7.02.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 3.02.

§ 4. Composition of District Court.

The District Court shall be composed of one District Court Judge and such other Associate District Court Judges as necessary

Historical and Statutory Notes

Source:

Band Statute 1303-MLC4, § 7.03.

Band Ordinance 39-19.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 3.02.

§ 5. Appointment and Terms of Office of Justices.

- (a) The terms of office of the three Justices of the Court of Appeals shall be for six (6) years. Any Justice may be disciplined or removed for cause pursuant to 3 MLBS § 25.
- (b) The Justices shall be nominated by the Chief Executive, who shall submit the nomination to Band Assembly. Band Assembly shall upon receipt of the nomination confirm or reject the nomination within thirty (30) days. There shall be one justice from each of the three respective districts of the Mille Lacs Band.
- (c) The Justice from the Nay-Ah-Shing District shall serve a six-year term expiring August 15, 1996 and on this date every six years hence. The Justice from the Ga-ma-ta-wa-ga-gi-moog District shall serve a six-year term expiring August 30, 1998 and on this date every six years hence. The Justice from the Ah-sho-moog District shall serve a six-year term expiring August 15, 2000 and on this date every six years hence.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 12.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 7.

Band Statute 1303-MLC-4, § 12.06 provides: “The existing Justices and Judges holding office pursuant to 1143-MLC-4 may remain as justices on the Court of Appeals, unless removed for cause according to 1141-MLC-2, § 26 [3 MLBS § 25], until August 15, 1996.”

Cross References

Designation of Band districts, *see* MLBS § 11.

§ 6. Chief Justice; Election and Term of Office.

The Justices of the Court of Appeals shall elect from among themselves the Chief Justice who shall then serve a four-year term as Chief Justice expiring August 30, 1996 and on this date every four years hence.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 12.03.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 7.

§ 7. District Court Judge and Associate Judges; Appointment and Terms of Office.

- (a) The District Court Judge and the Associate Judges shall be nominated by the Chief Executive who shall submit the nomination to Band Assembly. Band Assembly shall upon receipt of the nominations confirm or reject the nominations within 30 days.
- (b) The District Court Judge shall serve a six-year term expiring August 15, 1 996 and on this date every six years hence.
- (c) The Associate Judges shall each serve a four-year term expiring August 30, 2024 and on this date four years hence.
- (d) The District Court Judge or Associate Judges may be disciplined or removed for cause pursuant to 3 MLBS § 25.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 12.04, 12.05.
Band Ordinance 39-19.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 7.

§ 8. Vacancy in Court of Central Jurisdiction.

- (a) Should the Chief Justice temporarily become unable to perform the duties of office those powers and duties shall devolve upon the Senior Associate Justice, until such disability is removed.
- (b) Whenever an Associate Justice of the Court is unable to perform the duties of office, those powers and duties shall devolve upon a Special Magistrate, until such disability is removed or another justice is appointed and sworn in.
- (c) In the event a Justice or Judge is unable to complete their term of office that position will be filled by nomination from the Chief Executive subject to ratification by Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 13.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 8.

Cross References

Special Magistrate, *see* MLBS § 108.

§ 9. Qualifications of Justices.

- (a) Any person who is nominated as a justice of the Court of Central Jurisdiction shall meet the following qualifications:
 - (1) Shall be an enrolled member of the Non-Removable Mille Lacs Band of Chippewa Indians, and;
 - (2) Shall have reached the chronological age of twenty-one, and;
 - (3) Shall have graduated from high school or obtained an equivalent degree, or be at least 55 years old, and;
 - (4) Shall be knowledgeable of the Constitution of the Minnesota Chippewa Tribe, the laws of the Non-Removable Mille Lacs Band of Chippewa Indians and the unwritten customs and traditions of the Band, and;
 - (5) Shall be a person of honor, integrity and good moral character as evidenced by letters of recommendation from four (4) elders of the Band who are not related within the first degree to the person nominated for office.
- (b) No person shall be nominated as a justice in the event said person shall have been convicted of a felony or if that person has been convicted of a gross misdemeanor within seven (7) years.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 14.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 9.

§ 10. Qualifications of District Judge and Associate Judges.

- (a) Shall have graduated from an accredited law school⁷ and be in good standing of a state bar.

- (b) Shall have never been convicted of a felony or gross misdemeanor and if convicted for such while seated as a judge shall be subject to removal pursuant to 3 MLBS § 25.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 15.
Band Ordinance 39-19.

§ 11. Removal or Discipline of Justices and Judges.

- (a) A joint session of the Band Assembly, pursuant to 3 MLBS § 25, may remove or discipline any justice or judge of the Court for just cause associated with a violation of the Judicial Code of Ethics of the Non-Removable Mille Lacs Band of Chippewa Indians or a violation of Article X, § 2(a), (b), (c), (d) and (e) of the Constitution of the Minnesota Chippewa Tribe or for any felony, gross misdemeanor or a second misdemeanor conviction while holding office, excluding minor traffic offenses or a criminal conviction in the Court of Central Jurisdiction.
- (b) No Justice of the Court of Central Jurisdiction shall be removed or disciplined without due process of law.
- (c) The following procedures shall apply to all removal or disciplinary proceedings of Justices or Judges:
 - (1) The removal process shall be by a Joint Session with the Speaker of the Band Assembly presiding. The Judge/Justice may be represented by counsel during the process and shall have the right to call witnesses and present evidence on their behalf and shall be advised of the charges against them.
 - (2) Following questioning by the hearing officer, the witness may make additional comments within the limits of relevancy and propriety. Any other party or legal representative may question the witness. A witness may be recalled at the discretion of the hearing officer if additional questions are raised.
 - (3) Hearings are to be held upon at least seventy-two (72) hours advance notice to the parties. A continuance may be granted for good cause at the discretion of the hearing officer. Hearings shall be informal and there may be as many sessions as deemed necessary by the Joint Session to enable review of all the evidence.
 - (4) The decisions of the Joint Session, whether interim or final shall be in writing and shall contain the following:
 - (i) The name of the party;

- (ii) The date of the hearing;
 - (iii) The facts established by the evidence;
 - (iv) The decision of the Joint Session, including the remedy being given.
- (d) The decision of the Joint Session on any removal or disciplinary action shall be final.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 21.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 10.

Cross References

Due process of law, *see* 1 MLBS § 8.

Joint Session of Band Assembly, *see* 3 MLBS § 24.

§ 12. Salaries of Justices.

- (a) The salary for the Associate Justices of the Court of Appeals shall be as established by Band Assembly appropriation.
- (b) The Chief Justice may recommend to the Band Assembly adjustments to salaries based upon recommendations contained in an annual report of the Judiciary, current and anticipated case loads, and the general business conditions existing in the court.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 18.

§ 13. Official Seal.

- (a) The official seal of the Court of Central Jurisdiction shall be affixed to all official documents of the Court. Any document of the Court of Central Jurisdiction without the official seal shall have no legal force and effect.
- (b) The official seal of the Court of Central Jurisdiction shall be at all times kept in a secure location.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 31.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 13.

Cross References

Seal, judicial authority, *see* 5 MLBS § 110.

§ 14. Convening Schedule of District Court.

The District Court of the Mille Lacs Band of Chippewa Indians shall regularly convene in District III, at least one (1) day in every two (2) week period; District II, at least one (1) day in every two (2) week period and District I, at all other times.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 36.

§ 15. Fines and Bonds.

All moneys paid into the Court of Central Jurisdiction, or received by the Clerk of Court, in any case pending or adjudicated, shall be forthwith deposited with the Office of Management and Budget, in the name of the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 30.

CHAPTER 2

JUDICIAL AUTHORITY AND JURISDICTION

Section

101. Judicial Authority.

102. Writs, Judgments, and Orders.

103. Cultural Causes of Action; Panel of Elders Decisions.

104. Powers of Construction and Interpretation.

105. Rules.

- 106. Regulation of Practice of Law.**
- 107. Court Staff.**
- 108. Special Magistrate.**
- 109. Contracts, Grants, Bequests, Donations, or Gifts.**
- 110. Seal.**
- 111. Subject Matter Jurisdiction.**
- 112. Persons Subject to Criminal Jurisdiction.**
- 113. Personal Jurisdiction.**
- 114. Duties of Chief Justice.**
- 115. Oath for Band Offices.**
- 116. Duties of Individual Justices and Judges.**
- 117. Responsibilities of Individual Justices and Judges.**
- 118. Continuing Education.**
- 119. Immunity for Justices and Judges.**

Cross References

Disobedience to lawful orders of Court, *see* 24 MLBS § 1210.

Environmental protection, jurisdiction of Band, *see* 11 MLBS §§ 9, 10, 104.

Judicial review of constitutionality of acts and decisions of Band Assembly, *see* 3 MLBS § 21.

§ 101. Judicial Authority.

Except as otherwise provided for by law the Court of Central Jurisdiction shall have all judicial authority extending to cases in law and equity. The Court of Central Jurisdiction shall have all powers necessary for carrying into execution its judgments and determinations in order to promote the general welfare, preserve and maintain justice, and to protect the rights of all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 8.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 4.

Cross References

Functions of governmental authority, *see* 2 MLBS § 4.

§ 102. Writs, Judgments, and Orders.

The Court of Central Jurisdiction shall have the power to issue writs of habeas corpus, judgments, orders requiring conduct, orders prohibiting conduct, certification of appeals or any other writs as are necessary in the furtherance of justice.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 8.03.

Prior Laws:

Band Statute 1043-MLC-4, T. I, § 4.03.

§ 103. Cultural Causes of Action; Panel of Elders Decisions.

The Court of Central Jurisdiction shall have the authority to enter as a judgment and order a decision made by a panel of elders in a Cultural Cause of Action between Band members as defined by 24 MLBS § 601 et seq.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 8.10.

§ 104. Powers of Construction and Interpretation.

The Court of Central Jurisdiction shall have the power to construe and interpret statutes, legal instruments, records, decisions, or legal process applicable or pertaining to or emanating from the Non-Removable Mille Lacs Band of Chippewa Indians, when brought before the Court.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 8.08.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 4.09.

§ 105. Rules.

- (a) The Court of Central Jurisdiction shall have the power to prescribe by general rules, the forms of process, writs, pleadings, rules of evidence and motions and the practice and procedure of the District Court and Court of Appeals of the Mille Lacs Band in civil actions and criminal actions and appeals therein, such rules shall not abridge, enlarge or modify the substantive rights of any person.
- (b) Such rules shall not take effect until 90 days after they have been reported to the Band Assembly by the Chief Justice during a regular session of the Band Assembly and shall not abridge the right of Band Assembly to enact, modify, or repeal any statute or modify or repeal any rule of the Court of Central Jurisdiction pursuant thereto.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, §§ 8.01, 8.02.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 4.

§ 106. Regulation of Practice of Law.

The Court of Central Jurisdiction shall have the power to prescribe rules governing the admission of individuals to practice law and to prescribe rules governing conduct in the practice of law, and rules concerning the presentation, hearing and determination of accusations against individuals practicing law. Such rules shall not be inconsistent with the laws of the Mille Lacs Band.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 8.04.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 4.04.

§ 107. Court Staff.

The Court of Central Jurisdiction shall have the power to appoint a Clerk of Court, Court Administrator or any other court staff as may be required and to prescribe the necessary duties and responsibilities of those positions not inconsistent with Mille Lacs Band law.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 8.05.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 4.06.

§ 108. Special Magistrate.

The Court of Central Jurisdiction shall have the power to appoint a law trained individual to serve as a Special Magistrate as needed to hear cases at such times as the interests of justice require independent or supplementary judicial review. A Special Magistrate shall have all authority conferred upon any other justice or judge of the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 8.06.

Prior Laws:

Band Statute 1043-MLC-4, T. I, § 4.07.

§ 109. Contracts, Grants, Bequests, Donations, or Gifts.

The Court of Central Jurisdiction shall have the power to contract with and to receive grants, bequests, donations or gifts for the enhancement of the judiciary of the Mille Lacs Band and to apply the same to the purpose designated. All said contracts, grants, bequests, donations or gifts may be accepted or entered into by the Court by and with the advice and consent of the Band Assembly in accordance with applicable Band law.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 8.07.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 4.08.

§ 110. Seal.

The Court of Central Jurisdiction shall have the power to adopt a seal which shall be used to authenticate judgments, orders, opinions and other court papers. The form of the seal and regulation of the seal's use shall be specified by court rules.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 8.09.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 4.10.

Cross References

Official seal, judicial organization, *see* 5 MLBS § 13.

§ 111. Subject Matter Jurisdiction.

- (a) The Court of Central Jurisdiction shall have jurisdiction over all civil and criminal matters where all parties are Indians within the jurisdiction of the Court. The Court of Central Jurisdiction shall have civil jurisdiction over non-Indians in all cases as provided in Section 113 of this Chapter. The Court shall have jurisdiction pursuant to the laws of the United States of America. The Court shall have jurisdiction over contracts made with the Non-Removable Mille Lacs Band of Chippewa Indians, or any of its political subdivisions or entities, for services to be performed within the territorial jurisdiction of the Band, except as such jurisdiction may be otherwise limited by Band Statute.
- (b) The Court of Central Jurisdiction is hereby granted exclusive original jurisdiction over all criminal or civil causes of action, involving any person, where such grievance or dispute arises concerning any property personal or otherwise, located on lands or contiguous waters subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.
- (c) The Court of Central Jurisdiction shall have subject matter jurisdiction over any cause of action that may arise from unwritten cultural law or a violation thereof. The Court of Central Jurisdiction however, in the exercise of its authority to enforce all provisions of unwritten cultural law and upon the authority it possess as to accord equal justice shall give full force and effect to 24 MLBS Chapter 1 , if the provisions of that chapter are not inconsistent with any custom or cultural law heretofore or hereafter in place in the determination of cultural causes of action arising pursuant to any statute of the Non-Removable Mille Lacs Band of Chippewa Indians.
- (d)
 - (1) The Court of Central Jurisdiction shall have jurisdiction over all civil matters in which the Non-Removable Mille Lacs Band of Chippewa Indians, any of its political subdivisions or entities, or its officers, appointees or employees are parties in their official capacity. Nothing herein shall be construed as a waiver of sovereign immunity of the Band unless specifically authorized in accordance with Band law or by specific Band Statute.
 - (2) The Court of Central Jurisdiction has exclusive jurisdiction over all suits in which Band officials are defendants where declaratory and equitable relief is sought.
- (e) The District Court of the Court of Central Jurisdiction shall have original jurisdiction over all criminal and civil matters except as otherwise provided for by law.
- (f) The Court of Appeals shall have original jurisdiction over election disputes pursuant to the Minnesota Chippewa Tribal Election Ordinance and on issues certified to the Court of Appeals from foreign jurisdictions.

Historical and Statutory Notes

Source:

Band Statute 1092-MLC-25, § 16.
Band Statute 1130-MLC-51, T. I, § 6.
Band Statute 1303-MLC-4, § 9-11.
Band Ordinance 08-93.

Prior Laws:

Band Statute 1143-MLC-4, §§ 5, 22, 23.

Cross References

Change of name, authority of Court, *see* 8 MLBS § 801.
Civil causes of action, exclusive original jurisdiction, *see* 24 MLBS § 2.
Commercial practices, jurisdiction, *see* 18 MLBS § 5.
Commissioner of Finance, subject matter jurisdiction of Court of Central Jurisdiction, *see* 22 MLBS § 113.
Concurrent civil jurisdiction with United States Courts, *see* 24 MLBS § 3.
Criminal offenses, subject matter jurisdiction, *see* 24 MLBS § 4002.
Education, subject-matter jurisdiction, *see* 9 MLBS § 29.
Employee Credit Union, jurisdiction of Court, *see* 17 MLBS § 18.
Federation Cultural Resources Board, review of decisions, *see* 10 MLBS § 119.
Firewood harvest, jurisdiction, *see* 11 MLBS § 2412.
Gasoline and petroleum products excise tax, subject matter jurisdiction, *see* 22 MLBS § 315.
Housing Authority, jurisdiction, *see* 12 MLBS § 31.
Motor vehicles, subject matter jurisdiction, *see* 19 MLBS § 12.
Natural Resource Protection Code, jurisdiction, *see* 11 MLBS § 2601.
Procurement, subject matter jurisdiction, *see* 7 MLBS § 48.
Prohibited drugs, subject matter jurisdiction, *see* 23 MLBS § 9.
Property disputes, jurisdiction, *see* 21 MLBS §§ 3, 4.
Sales and use taxes, subject matter jurisdiction, *see* 22 MLBS § 516.
Tobacco excise taxes, subject matter jurisdiction, *see* 22 MLBS § 221.
Treaty usufructuary rights, implementation, subject matter jurisdiction, *see* 2 MLBS § 1104.
Uniform Commercial Code, jurisdiction, *see* 18 MLBS § 301.

§ 112. Persons Subject to Criminal Jurisdiction.

The Court of Central Jurisdiction shall have criminal jurisdiction over Mille Lacs Band members and non-member Indians alike and as may otherwise be prescribed by law.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 9.01.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 5.01, 5.02.

Cross References

Criminal procedure, jurisdiction over persons, *see* 24 MLBS § 4003.

Enrolled members exercising usufructuary rights in ceded territory, jurisdiction, *see* 2 MLBS § 1151.

§ 113. Personal Jurisdiction.

The Court of Central Jurisdiction shall have civil jurisdiction over any person, corporation, business organization or other private entity that:

- (a) Transacts business with any member of the Band within the territorial jurisdiction of the Band;
- (b) Engages in any activity which results in injury or property damage within the territorial jurisdiction of the Mille Lacs Band;
- (c) Engages in any activity which results in a dispute over the ownership, use, possession or interest in any property within the territorial jurisdiction of the Band;
- (d) Contracts to insure any person, property, corporation, business organization or risk located within the territorial jurisdiction of the Band;
- (e) Enters into a written or verbal sales or service agreement within the territorial jurisdiction of the Mille Lacs Band or where performance of the agreement is to be within the territorial jurisdiction of the Mille Lacs Band;
- (f) Engages in conduct that may affect the environment or territories under the jurisdiction of the Band or affects the natural resources of the Band or threatens the health, safety, peace or welfare of Mille Lacs Band or inhabitants thereof.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 9.02.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 5.02.

Cross References

Commercial practices, jurisdiction, *see* 18 MLBS § 5.

Concurrent jurisdiction with United States Courts, *see* 24 MLBS § 3.

Enrolled members exercising usufructuary rights in ceded territory, jurisdiction, *see* 2 MLBS § 1151.

Environmental protection, actions for declaratory or equitable relief, jurisdiction and service of process, *see* 11 MLBS § 20.

Native American veteran Direct Loan Program, unlawful detainer, *see* 12 MLBS § 115.

Nay-Ah-Shing School, admission of persons under Band jurisdiction, *see* 9 MLBS § 18.

§ 114. Duties of Chief Justice.

The Chief Justice of the Court of Central Jurisdiction shall have the following Judicial and Administrative authority in exercising the judicial powers of the Band government:

- (a) To convene the Court of Appeals on the first Tuesday of February, June, September and November for the purpose of opening the general term of the Court. The Chief Justice may convene the Court of Appeals on special occasions at such time and locations as may be designated upon five (5) days written notice to the other justices prior thereto;
- (b) To present to the Band Assembly an annual State of the Judiciary Address on the second Tuesday of January of each calendar year;
- (c) To present to the Chief Executive and the Band Assembly information and recommendations for the improvement of the Judiciary;
- (d) To execute rules and policies of the Court consistent with the provisions of Band Statute for the orderly conduct of Court business as provided for by law,
- (e) To prepare a biennial appropriation request, for the court after consultation with the other Justices and Judges of the Court, and submit the request no later than September 1 of each odd numbered year;
- (f) To appoint a Special Magistrate in a proceeding, who has graduated from law school, in the interests of justice and in accordance with 5 MLBS § 108, when necessary.
- (g) To exercise all administrative duties necessary for the continued conduct of competent court operations.
- (h) To enter as a judgment and order determinations made in a Cultural Cause of Action.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 16.

Band Ordinance 23-99, §§ 2, 6.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 24.

Cross References

Juvenile detention and shelter care facilities, rules and regulations, *see* 8 MLBS § 15.

§ 115. Oath for Band Offices.

The Chief Justice or in his/her absence any other Justice of the Court shall administer the following Oath of Office for Band Officials:

"I, _____, do hereby swear that I will support, honor, and respect the Constitution of the Minnesota Chippewa Tribe and the laws of the Non-Removable Mille Lacs Band of Chippewa Indians and I will protect the rights of Band members and others under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indian, and that I will faithfully and impartially discharge the duties of the office to the best of my judgment and ability so help me gi chi ma ni do."

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 32.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 17.

Cross References

Federation Cultural Resources Board, oath of office, *see* 10 MLBS § 106.

Official oath of office, *see* 2 MLBS § 8.

§ 116. Duties of Individual Justices and Judges.

Individual justices and judges of the Court of Central Jurisdiction shall have the following authority:

- (a) To preserve and enforce order in their immediate presence, and in all proceedings when performing official duties.
- (b) To compel obedience to lawful directives and orders.
- (c) To compel attendance of persons called to testify in a proceeding as provided by law.
- (d) To administer oaths and affirmation to persons in proceedings before them and in any other circumstance where such shall be necessary in the exercise of Judicial powers or duties or where the law so requires an oath or affirmation.
- (e) To punish civilly or criminally, for contempt, any person, to assure the effective exercise of judicial authority.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 17.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 25.

§ 117. Responsibilities of Individual Justices and Judges.

- (a) The individual justices and judges shall adopt by court order a code of judicial conduct and conform their conduct to the same.
- (b) A judge or justice who discloses any information relative to any pending case to the public-at-large may be subject to disciplinary action by the Joint Session.
- (c) No Justice, Judge or Special Magistrate shall be qualified to act as such in any case wherein he/she has any direct or indirect interest or wherein any relative once removed under cultural law by marriage is a party of interest in the proceeding.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, §§ 19, 22, 23.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 26, T. VIII, §§ 9, II.

Cross References

Confidentiality, child support proceedings, *see* 8 MLBS § 2104.

§ 118. Continuing Education.

The individual justices and judges shall attend a minimum number of legal education and training courses each year as provided for in the annual budget.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 19.01.

§ 119. Immunity for Justices and Judges.

The justices and judges of the Court of Central Jurisdiction shall be immune from civil liability arising from judicial acts and deeds in the performance of their judicial duties.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 20.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 27.

Cross References

Suits against Band officials, *see* 24 MLBS § 701.

TITLE 6 - GOVERNMENT EMPLOYEES

<u>Chapter</u>	<u>Section</u>
1. Personnel Policy and Procedures Manual	1
2. Senior Executive Staff Policies	1001
3. Travel Policies	1101
4. Fringe Benefits	1131
5. Ethics Code	1151
6. [Reserved]	
7. Indemnification	2001

Cross References

Administration Policy Board, *see* 4 MLBS § 8.

Band government identification cards, *see* 22 MLBS § 308.

Employee credit union, *see* 17 MLBS § 1 et seq.

Personal income tax, *see* 22 MLBS § 701.

Suits against Band officials, *see* 24 MLBS § 701.

Violation of orders or opinions, *see* 24 MLBS § 1212.

CHAPTER 1

PERSONNEL POLICY AND PROCEDURES

Section

- 1. Adoption and Amendment of Personnel Policy and Procedures Manual.**
- 2. Exempt Personnel.**
- 3. American Indian Preference.**
- 4. Employee and Appointee Trade Transactions.**

Historical and Statutory Notes

The title of Ordinance 14-10 is: “An ordinance adopting a Personnel Policy and Procedures Manual for the Mille Lacs Band of Ojibwe and amending Title 6 of the Mille Lacs Band Statutes Annotated and for related purposes”

The preamble of Ordinance 14-10 provides: “Be it enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of adopting a Personnel Policy and Procedures Manual and amending Title 6 of the Mille Lacs Band Statutes Annotated and for related purposes. In conjunction with the adoption of the new Personnel Policy and Procedures Manual, Title 6 of the Mille Lacs Band Statutes Annotated is amended to repeal Chapter 1, entitled “Personnel Policy Manual,” as well as Chapter 6 entitled “Drug Free Work Place.”

Section 2 of Title I of Ordinance 14-10 provides: “Chapter 6, entitled “Drug Free Work Place,” of Title 6 of the Mille Lacs Band Statutes Annotated is repealed in its entirety. The Band’s Drug and Alcohol policy, as set forth in the MLBO Personnel Policy and Procedures Manual adopted in accordance with Section 1 above, is hereby approved.”

Section 3 of Title I of Ordinance 14-10 provides: “The Band Assembly reserves the right to amend the MLBO Personnel Policy and Procedures Manual at any time.”

The title of Ordinance 33-12 is: “An Ordinance amending Title 6 of the Mille Lacs Band Statutes Annotated entitled Government Employees to do the following: (1) exempt the MLBO Police Department from the government personnel policies; (2) remove the Nay-Ah-Shing School employees from the exemption list; (3) clarify that the Nay-Ah-Shing School Board is subject to removal according to Band law; and (4) adopt the amended MLBO Personnel Policy and Procedures.”

The preamble of Ordinance 33-12 provides: “The Band Assembly of the Mille Lacs Band of Ojibwe believes that the establishment of a fair and uniform system of policies for employees working within the three branch government is in the best interest of the Band. It is the intent of the Band Assembly to provide a fair set of standards for government employees and to exempt those employees whose duties fall outside of the customary and usual activities of Band business. These exempt employees shall follow the set of standards and policies duly established and adopted for such individual departments.”

The title of Ordinance 15-14 is: “An ordinance amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; amending Sections 2, 4, 6 and 10 in Title 18 of the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 in the Mille Lacs Band Statutes Annotated; and repealing any inconsistent Indian Preference language in any other Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

The preamble of Ordinance 15-14 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; Sections 2, 4, 6 and 10 in Title* in the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated (the Band’s Indian Employment Rights Ordinance or ‘TERO’); and repealing any inconsistent Indian Preference language in Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

*So in original. Probably should be Title 18.

Cross References

Employee parking, *see* Admin. Comm. Order 22-85.

Gaming Commission employees, compliance with provisions of law, *see* 15 MLBS § 403.

Code of Federal Regulations Staffing with Bureau of Indian Affairs employees, *see* 25 CFR 275. 1 et seq.

§ 1. Adoption and Amendment of Personnel Policy and Procedures Manual.

- (a) The Mille Lacs Band of Ojibwe Personnel Policy and Procedures Manual dated January 6, 2010, is hereby adopted and made applicable to all employees of the Mille Lacs Band of Ojibwe and its agencies and subdivisions except as provided in section 2 of this Chapter 1. Hereafter, it shall be the duty of the Employment Law Specialist, Solicitor General’s Office, and Legislative Counsel to ensure that the MLBO Personnel Policy and Procedures Manual is amended on an annual basis or, as needed, to comply with federal and Band law and Band policy. Such amended Personnel Policy and Procedures Manual shall be approved by duly enacted legislation of the Band Assembly prior to implementation.
- (b) The Mille Lacs Band of Ojibwe (MLBO) Personnel Policies and Procedures, as amended and approved on February 22, 2012, are hereby adopted. A copy of said Personnel Policies and Procedures Manual is attached to Band Ordinance 33-12 as Exhibit A.

Historical and Statutory Notes

Source:

Band Ordinance 14-10, Title I, § 1.

Band Ordinance 33-12, § 2.

§ 2. Exempt Personnel.

- (a) The following positions shall not be subject to the provisions of the MLBO Personnel Policy and Procedures Manual:
 - (1) The Chief Executive;

- (2) Secretary-Treasurer/Speaker of the Assembly and three (3) District Representatives;
 - (3) Employees of the Corporate Commission and its subsidiaries;
 - (4) Employees of the Gaming Regulatory Authority;
 - (5) Employees of the MLBO Police Department; and
 - (6) Employees hired under contract for a particular purpose.
- (b) Appointed officials of the Band are subject to all provisions in the MLBO Personnel Policy and Procedures Manual except to the extent those provisions conflict with other applicable provisions of Band law.
 - (c) According to 9 MLBS § 6, elected Nay-Ah-Shing School Board members are subject to removal from office as determined by 3 MLBS § 25.

Historical and Statutory Notes

Source:

Band Ordinance 14-10, Title I, § 1.
 Band Ordinance 33-12, § 1.

§ 3. American Indian Preference.

- (a) The American Indian preference provisions in the MLBO Personnel Policy and Procedures Manual shall be construed in a manner that is consistent with the requirements of Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated (the Band’s Indian Employment Rights Ordinance or “TERO”) and shall supersede all other provisions of Band law.
- (b) Assuming equal qualifications, the Personnel Policy and Procedures Manual provides American Indian preference will be given in employment recruitment, hiring, promotions, training and development in the following order:
 - (1) Band Members, defined as enrolled members of the Mille Lacs Band of Ojibwe Indians;
 - (2) Other Indians, defined as enrolled members of any other federally recognized tribe; and
 - (3) All others.

Historical and Statutory Notes

Source:

Band Ordinance 14-10, Title I, § 1.

Band Ordinance 15-14, Title I, § 1.

§ 4. Employee and Appointee Trade Transactions.

No employee or appointee of the Band shall be allowed to have any personal interest or concern in any business that sells services or goods to any Band entity, except as authorized with written permission by the Chief Executive.

Historical and Statutory Notes

Source:

Band Ordinance 14-10, Title I, § 1.

CHAPTER 2

SENIOR EXECUTIVE STAFF POLICIES

Section

1001. Payroll.

1002. Salary Status.

1003. Travel Mileage.

1004. Per Diem.

1005. Fringe Benefits – [REPEALED].

1006. Effect of Resignation or Removal – [REPEALED].

1007. Avoiding Conflict of Interest.

[See Ordinance 39-98 – Travel regulations]

[Additional Fringe benefits ordinance – Ordinance 47-98]

§ 1001. Payroll.

- (a) The Mille Lacs Band Assembly has determined that each appointed member of the government shall have a payroll check prepared after they submit and sign an authorized time sheet.
- (b) The Mille Lacs Band Assembly has determined their payroll is to be issued each Friday at 10:00 a.m. for the previously ended pay period of Friday.

Historical and Statutory Notes

Source:

Band Statute 1099-MLC-8, Gov. Pol., §§ 1, 1.2.

§ 1002. Salary Status.

- (a) All appointed members of the government are on salary.
- (b) Compensatory time shall not be available for Senior Executive Staff appointees of tribal government.

Historical and Statutory Notes

Source:

Band Statute 1099-MLC-8, Gov. Pol., §§ 1.3, 1.4.

§ 1003. Travel Mileage.

[REPEALED].

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 2.

§ 1004. Per Diem.

[REPEALED].

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 2.

§1005. Fringe Benefits.

[REPEALD].

Historical and Statutory Notes

Source:

Band Ordinance 45-98, § 2.

§ 1006. Effect of Resignation or Removal.

[REPEALED].

Historical and Statutory Notes

Source:

Band Ordinance 45-98, § 2.

§ 1007. Avoiding Conflict of Interest.

- (a) Senior executive staff appointees of tribal government shall not use their appointed position for their own personal financial benefit or financial benefit of family members.
- (b) Appointed officials of tribal government shall not order the preparation of any type of check in which they/or an immediate family are to be the payee.
- (c) Senior executive staff appointees of tribal government shall not be loaned program/corporate funds under any circumstance provided that all programs follow the same policy.

Historical and Statutory Notes

Source:

Band Statute 1099-MLC-8, Gov. Pol., §§ 4.03-4.05.

Cross References

Leases of restricted lands under Band jurisdiction, *see* 6 MLBS § 11.
Trade involving employees and appointees of Band, *see* 6 MLBS § 10.

CHAPTER 3

TRAVEL POLICIES

Section

1101. Purpose.

1102. Definitions.

1103. Interpretation.

1104. Per Diem; Elected Officials Traveling on Business.

1105. Per Diem; Appointed Officials Traveling on Official Business.

1106. Mileage and Related Allowances.

1107. Allowable Travel Expenses.

1108. Airfare.

1109. Advancements and Deductions.

1110. Application of this Chapter.

Historical and Statutory Notes

The Preamble to and §§ 2 and 15 of Band Ordinance 39-98 (this Chapter) provide:

“Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of establishing a body of law governing travel for officials of the Mille Lacs Band of Ojibwe. The Band Assembly determines that it is in the Band’s best interest to provide a uniform set of protections and safeguards for Band assets by enacting effective and efficient travel policies. This Act repeals and replaces Title 6 of the Mille Lacs Band Statutes Annotated in its entirety.”

“**Section 2. Repeal.** Title 6 of the Mille Lacs Band Statutes Annotated is hereby repealed and replaced in its entirety to the extent that it is inconsistent with this Act.”

“**Section 15. Effective Date.** This Act shall become effective (30) consecutive days after it is enacted.”

§ 1101. Purpose.

This Chapter is intended to establish a body of law governing travel for Elected Officials and Appointed Officials of the Mille Lacs Band of Ojibwe. The purpose of this Chapter is to provide a uniform set of regulations governing travel that will allow officials of the Band to represent the interests of the Band to the best of their abilities and to manage resources of the Band effectively and responsibly.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 1.

§ 1102. Definitions.

- (a) **Actual Expenses.** Out of pocket expenses paid by a traveler when traveling on official Band business that may be reimbursed to the traveler.
- (b) **Appointed Officials.** For purposes of this Chapter appointed officials of the Mille Lacs Band shall include but not be limited to, the Commissioner of Administration, the Assistant Commissioner of Administration, the Commissioner of Education, the Commissioner of Finance, the Commissioner of Health and Human Services, the Commissioner of Community Development, the Commissioner of Natural Resources,

the Solicitor General, the Justices and Judges of the Court of Central Jurisdiction or any other person designated as a Senior Executive Staff employee.

- (c) **Elected Officials.** For purposes of this Chapter elected officials shall be the Chief Executive, the Secretary/Treasurer of the Band Assembly, and the District Representatives of the Band Assembly.
- (d) **Joint Resolution.** A resolution adopted by the Band Assembly that requires the concurrence of the Chief Executive to have the effect of law and which shall remain in effect until altered by the enactment of law or joint resolution.
- (e) **Misconduct.** Shall include but not be limited to unlawful behavior or other intentional and wrongful behavior other than negligence or carelessness.
- (f) **Necessary Expense.** An expense that is helpful and appropriate in assisting a traveler in the performance of their duty. An expense does not have to be essential to be considered necessary.
- (g) **Per Diem.** A payment made to a traveler for daily subsistence incurred for travel instead of payment made for the actual expense for subsistence while on travel.
- (h) **Senior Executive Staff.** All individuals employed by the Mille Lacs Band or a political subdivision having the status of Senior Executive Staff, as designated by their personnel file, and who are not otherwise designated as Appointed Officials including but not limited to the Deputy Assistant to the Chief Executive.
- (i) **Subsistence.** Lodging, meals, and other incidental expenses for the personal sustenance and comfort of the traveler.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 3.

§ 1103. Interpretation.

The provisions of this Chapter shall be interpreted and applied liberally to accomplish the purpose of this Chapter and if a court of competent jurisdiction adjudges any section, provision or portion invalid, the remainder of the Chapter shall not be affected thereby.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 4.

§ 1104. Per Diem; Elected Officials Traveling on Official Business.

(a)

- (1) Under provisions prescribed by this Chapter, an elected official, when traveling on official Band business shall be entitled to any of the following:
 - (i) Per Diem at a rate not to exceed that established by joint resolution of the Band Assembly including:
 - (A) Lodging for elected officials traveling on behalf of the Band which shall be paid for with a Band credit card not to exceed an amount established by joint resolution of the Band Assembly;
 - (B) Elected officials shall receive payment for meals and incidentals at a rate pre-determined by joint resolution.
 - (ii) Reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by joint resolution of the Band Assembly; or
 - (iii) Combination of payments described in subparagraphs (i) and (ii) of this paragraph.
- (2) For travel consuming less than ten hours in a single day, the payment prescribed shall be as set forth pursuant to this Chapter.

(b)

- (1) Under the provisions set forth in this Chapter, an elected official who abandons the travel assignment prior to its completion:
 - (i) Because of an incapacitating illness or injury is entitled to reimbursement for expenses of transportation to the elected officials designated post of duty, or home, as the case may be, and to payments pursuant to paragraph (a) of this section until that location is reached; or
 - (ii) Because of a personal or family emergency (such as but not limited to serious illness, injury, or a death, or an emergency situation), the official shall be entitled to incur additional expenses to return to the designated post of duty or home, as the case may be.

(2)

- (i) Under provisions of this Chapter, an elected official who, interrupts the travel assignment prior to its completion for a reason specified in subparagraph (1) of subparagraph (i) of this paragraph, may be allowed (subject to the limitation provided in this section);
 - (A) To incur transportation expenses to the location where necessary medical services are provided or the emergency situation exists;
 - (B) Payments pursuant to paragraph (a) of this section until that location is reached; and
 - (C) Reimbursement and payments or to incur expenses for the return to such assignment or location.
- (ii) The amount of additional expenses an elected official may incur, pursuant to subparagraph (2) shall be the elected official's actual cost of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location, less the cost of transportation which the elected official would have incurred had such travel begun and ended at the elected official's designated post of duty, or home, as the case may be. The payments which an elected official may be allowed pursuant to subparagraph (A) of this paragraph shall be based on the additional time (if any) which was required for the elected official's transportation as a consequence of the transportation having begun and ended at a location on the travel assignment rather than at the elected official's designated post of duty, or home, as the case may be.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 5.

§ 1105. Per Diem; Appointed Officials Traveling on Official Business.

(a)

- (1) Under provisions prescribed in this Chapter, an appointed official, when traveling on official business from the appointed official's designated post of duty, or away from home, is entitled to any of the following;

- (i) Per Diem at a rate not to exceed that established pursuant to paragraph (c) of this section or as otherwise amended by joint resolution; or
 - (ii) Reimbursement for the actual and necessary expenses of official travel not to exceed an amount established pursuant to this Act or as amended by joint resolution of the Band Assembly; or
 - (iii) Combination of payments described in subparagraphs (i) and (ii) of this paragraph.
 - (iv) Lodging for appointed officials traveling on behalf of the Band which shall be paid for with a Band credit card not to exceed an amount established by joint resolution.
- (2) For travel consuming less than ten hours in a single day, the payment prescribed shall be as set forth in paragraphs (c) and (d) of this section.

(b)

- (1) Under the provisions set forth in this Chapter, an appointed official who abandons their travel assignment prior to its completion;
- (i) Because of an incapacitating illness or injury which is not due to an appointed official's own misconduct is entitled to reimbursement for expenses of transportation to the appointed official's designated post of duty, or home, as the case may be, and to payments pursuant to paragraph (a) of this section until that location is reached; or
 - (ii) Because of a personal or family emergency (such as but not limited to serious illness, injury, or a death or an emergency situation), the official shall be entitled to incur additional expenses to return to the appointed official's designated post of duty or home, as the case may be.
- (2)
- (i) Under provisions prescribed in this Chapter, an appointed official who, interrupts the travel assignment prior to its completion for a reason specified in this section, may be allowed (subject to the limitation provided in subparagraph (ii) of this paragraph)-
 - (A) To incur transportation expenses to the location where necessary medical services are provided or the emergency situation exists;

- (B) Payments pursuant to paragraph (a) of this section until that location is reached; and
 - (C) Reimbursement and payments or to incur expenses for the return to such assignment.
- (ii) The reimbursement which an appointed official may be allowed pursuant to this subparagraph shall be the appointed official's actual costs of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location. The payments which an appointed official may be allowed pursuant to subparagraph (i) of this paragraph shall be based on the additional time (if any) which was required for the appointed official's transportation as a consequence of the transportation having begun and ended at a location on the travel assignment (rather than at the officials designated post of duty, or home, as the case may be.
- (c) The Mille Lacs Band determines that the per diem rate for appointed officials shall be at the same rate that the United States General Service Administration prescribes for federal employees, on a quarter basis, unless otherwise prescribed by joint resolution.
 - (d) Common carrier transportation shall be utilized for trips with a destination in excess of two hundred miles from the appointed official's post of duty or home, when it is in the best interest of the Band to do so.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, §§ 6, 11(a)(1).

§ 1106. Mileage and Related Allowances.

- (a)
 - (1) Under provisions prescribed by this Chapter or as amended by joint resolution, an elected or appointed official traveling on official business for the Band is entitled to an established mileage rate instead of the actual expense of transportation, for the use of a privately owned vehicle when that mode of transportation is authorized or approved as more advantageous to the Band.
 - (2) Under provisions prescribed by this Chapter or as amended by joint resolution, an elected or appointed official traveling on official business for

the Band is entitled to an established rate per mile, instead of the actual expense of transportation, for the use of a privately owned airplane or motorcycle when that mode of transportation is authorized or approved as more advantageous to the Mille Lacs Band.

- (b) A determination that travel by a privately owned vehicle is more advantageous to the Band is not required under this section when payment on a mileage basis is limited to the actual cost of travel by common carrier including per diem.
- (c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in any case in which an elected or appointed official who is engaged on official business for the Band chooses to use a Band owned vehicle in lieu of a privately owned vehicle, payment on a mileage basis is limited to the actual expense of travel when not otherwise paid for by the Band.
- (d) In addition to the rate per mile authorized under paragraph (a) of this section, the elected or appointed official may be reimbursed for:
 - (1) Parking fees; and
 - (2) Ferry fees; and
 - (3) Bridge, road, and tunnel costs; and
 - (4) Airplane landing and tie-down fees.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 7.

§ 1107. Allowable Travel Expenses.

- (a) Except as otherwise permitted by this Chapter only actual and necessary travel expenses will be allowed for an elected or appointed official including but not limited to:
 - (1) Expenses for business related telephone or fax usage;
 - (2) Reasonable, actual costs for use of physical fitness facilities;
 - (3) The actual cost for transportation for governmental purposes when at the destination location such as but not limited to taxi fares, bus fares or car

rentals and valet which shall not exceed a rate prescribed by law or as amended by joint resolution of the Band Assembly;

- (4) The actual cost of cleaning or dry-cleaning clothes not to exceed an amount prescribed by Band law or as amended by joint resolution of the Band Assembly;
 - (5) The expense of personal phone calls while on travel in excess of 10 hours not to exceed 15 minutes per day on any individual trip; and
 - (6) Other actual and necessary expenses that may arise from time to time.
- (b) An elected or appointed official traveling on official business is expected to exercise reasonable care in incurring expenses. Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Individual officials will be responsible for excess costs and any unnecessary expenses incurred for personal preference or convenience as determined by review of post-trip travel expense statements pursuant to § 1109(d) of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 9.

§ 1108. Airfare.

Rates for elected and appointed officials are to be based on coach except in the following instances:

- (a) The rates do not exist or are unavailable within a reasonable time; or
- (b) Less than first class would result in a higher cost because of routing, time urgency, or other unavoidable reasons; or
- (c) Physical condition of the traveler necessitates use of the first-class travel.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 13.

§ 1109. Advancements and Deductions.

- (a) The Office of Management and Budget may advance, through the proper disbursing official, to an elected or appointed official entitled to per diem or mileage allowances under this Chapter, a sum considered advisable with regard to the character and probable duration of the travel to be performed based upon a pre-trip request form.
- (b) Any elected or appointed official of the Mille Lacs Band when requesting a travel advance pursuant to paragraph (a) of this section must complete a pre-trip travel expense statement which shall include the following information:
 - (1) Name and title of the person requesting advance travel payment; and
 - (2) The date the post-trip expense form is submitted to the Office of Management and Budget; and
 - (3) Destination and purpose of the travel along with supporting documentation; and
 - (4) Method of transportation used; and
 - (5) Signature of the traveler; and
 - (6) Appropriate authorizing signature of:
 - (i) The Chief Executive or Commissioner of Administration or other designee for Executive Branch Officials; or
 - (ii) The Secretary/Treasurer or designee for Legislative Branch Officials; or
 - (iii) The Chief Justice or designee for Judicial Branch Officials;
 - (7) The estimated travel cost based on the number of quarters of per diem claimed and other estimated travel expenses.
- (c) Notwithstanding any provisions to the contrary in this Chapter, a trip of ten hours or less occurring entirely in one calendar day by an appointed official is not eligible for advance payments.
- (d) Any elected or appointed official when receiving Band funds for travel shall submit a post-trip travel expense statement which shall include the following information:
 - (1) The name and title of the person traveling; and

- (2) The date the post-trip expense form is submitted to the Office of Management and Budget; and
 - (3) The destination and purpose of the travel; and
 - (4) The method of transportation used; and
 - (5) The signature of the traveler; and
 - (6) The appropriate authorizing signature of;
 - (i) The Chief Executive or the Commissioner of Administration or designee for Executive Branch Officials;
 - (ii) The Secretary/Treasurer or designee for Legislative Branch Officials;
 - (iii) The Chief Justice or designee for Judicial Branch Officials;
 - (7) The traveler must account for all advanced payments received pursuant to paragraph (a) of this section except for meals and incidentals and provide receipts in order to be reimbursed for any other allowable expenses.
- (e) Post-trip travel expense statements are due in the Office of Management and Budget within (30) consecutive days following the completion of the travel.
 - (f) A sum advanced or not used for allowable travel expenses is recoverable from the official or his/her estate by;
 - (1) Set off against accrued pay, retirement credit, or any other amount due the official;
 - (2) Deduction from any amount due from the Mille Lacs Band; and
 - (3) Such other method as provided for by law.
 - (g) The Band may recover any travel funds or disallowed expenditures following the date the post-trip statement is due. Five working days prior to the initiation of any recovery process for funds due the Band, the Secretary/Treasurer or designee shall give written notice of any such recovery process to the official.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, §§ 8, 10, 11(a)(2), 12.

§ 1110. Application of this Chapter.

Elected and appointed officials are prohibited from receiving travel payments or reimbursements for travel other than by the provisions of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 14.

CHAPTER 4

FRINGE BENEFITS

Subchapter

- 1. Elected Officials**
- 2. Appointed Officials**

Section

- 1131**
- 1141**

Historical and Statutory Notes

The Preamble and § 2 of Band Ordinance 47-98 (this Subchapter) provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending the body of law governing fringe benefits and compensation for Elected Officials of the Mille Lacs Band of Ojibwe. The Band Assembly determines that it is in the Band’s best interest to provide regulations governing fringe benefits for Elected Officials of the Mille Lacs Band of Ojibwe.”

The Preamble and § 2 of Band Ordinance 45-98 provide: “Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending the body of law governing fringe benefits for Appointed Officials of the Mille Lacs Band of Ojibwe. The Band Assembly determines that it is in the Band’s best interest to provide regulations governing fringe benefits for Appointed Officials of the Mille Lacs Band of Ojibwe.”

“**Section 2. Repeal.** 6 MLBS §1005-1006 of the Mille Lacs Band Statutes Annotated is hereby repealed and replaced in its entirety.”

SUBCHAPTER 1

ELECTED OFFICIALS

Section

- 1131. Purpose.**
- 1132. Definitions.**
- 1133. Allowable Fringe Benefits.**

§ 1131. Purpose.

This Subchapter is intended to amend the body of law governing fringe benefits for Elected Officials of the Mille Lacs Band of Ojibwe. The purpose of this Subchapter is to provide regulations governing fringe benefits that support and recognizes the service of Elected Officials of the Mille Lacs Band of Ojibwe.

Historical and Statutory Notes

Source:

Band Ordinance 47-98, § 1.

§ 1132. Definitions.

- (a) **Annual Leave.** For purposes of this Subchapter, annual leave shall include annual and personal leave days authorized by this Subchapter.
- (b) **Service.** The amount of time an Elected Official has been on the payroll of the Mille Lacs Band of Ojibwe as an Elected Official.

Historical and Statutory Notes

Source:

Band Ordinance 47-98, § 3.

§ 1133. Allowable Fringe Benefits.

- (a) Elected Officials shall accrue annual and sick leave based upon the number of years of service completed. Such leave shall be available at the beginning of each fiscal year. Leave for Elected Officials who assume office prior to the beginning of a new fiscal year shall be prorated based upon the number of full weeks that the Elected Official will work during that fiscal year.

	0-4 Yrs.	5-8 Yrs.	9-12 Yrs.	13+ Yrs.
Annual Leave	272 hrs.	288 hrs.	336 hrs.	400 hrs.
Sick Leave	160 hrs.	160 hrs.	106 hrs.	160 hrs.

- (b) Elected Officials may carryover up to 160 hours of annual leave and up to 160 hours of sick leave.

- (c) Elected Officials may be paid at the salary rate appropriate for all or any portion of their unused annual leave that they may have accrued, whether accumulated as an official or an employee of the Band.
- (d) Should an Elected Official resign or be removed from office that official may be paid for unused annual leave that has been carried over from the previous year. Elected Officials may also be paid for annual leave for the current fiscal year prorated to the number of weeks in office.
- (e) Elected Officials shall notify the Office Management and Budget prior to the end of the fiscal year how they wish to utilize any unused leave. If an Official chooses to be paid for any of their unused annual leave, OMB shall make such payment within 10 working days of receiving notice.

Historical and Statutory Notes

Source:

Band Ordinance 47-98, § 4.

SUBCHAPTER 2

APPOINTED OFFICIALS

Section

1141. Purpose.

1142. Definitions.

1143. Allowable Fringe Benefits.

§ 1141. Purpose.

This Subchapter is intended to amend the body of law governing fringe benefits for Appointed Officials of the Mille Lacs Band of Ojibwe. The purpose of this Subchapter is to provide regulations governing fringe benefits that support and recognizes the services of Appointed Officials of the Mille Lacs Band of Ojibwe.

Historical and Statutory Notes

Source:

Band Ordinance 45-98, § 1.

§ 1142. Definitions.

- (a) **Appointed Officials.** For purposes of this Subchapter, Appointed Officials of the Mille Lacs Band shall include but not be limited to; the Commissioner of Administration, the Assistant Commissioner of Administration, the Commissioner of Education, the Commissioner of Finance, the Commissioner of Health and Human Services, the Commissioner of Community Development, the Commissioner of Natural Resources, the Deputy Assistant, the Solicitor General, the District Court Judge or any other person designated as a Senior Executive Service employee.
- (b) **Annual Leave.** For purposes of this Subchapter, annual leave shall include annual and personal leave days authorized by this Subchapter.
- (c) **Service.** The amount of time an Appointed Official has been on the payroll of the Mille Lacs Band of Ojibwe as an Appointed Official.

Historical and Statutory Notes

Source:

Band Ordinance 45-98, § 3.

§ 1143. Allowable Fringe Benefits.

- (a) Appointed Officials shall accrue annual and sick leave based upon the number of years of service completed. Such leave shall be available at the beginning of each fiscal year. Leave for Appointed Officials who assume office prior to the beginning of a fiscal year shall be prorated based upon the number of full weeks that the Appointed Official will work during that fiscal year.

	0-4 Yrs.	5-8 Yrs.	9-12 Yrs.	13+ Yrs.
Annual Leave	272 hrs.	288 hrs.	336 hrs.	400 hrs.
Sick Leave	160 hrs.	160 hrs.	160 hrs.	160 hrs.

- (b) Appointed Officials may carryover up to 160 hours of annual leave and up to 160 hours of sick leave.
- (c) Appointed Officials may be paid at the salary rate appropriate for all or any portion of their unused annual leave that they may have accrued, whether accumulated as an official or an employee of the Band.
- (d) Should an Appointed Official resign or be removed from office that official may be paid for unused annual leave that has been carried over from the previous year.

Appointed Officials may also be paid for annual leave for the current fiscal year prorated to the number of weeks in office.

- (e) Appointed Officials may choose to donate any portion of their sick leave beyond 120 hours to any band employee who has exhausted their own sick leave due to sickness or disability.
- (f) Appointed Officials shall notify the Office Management and Budget prior to the end of the fiscal year how they wish to utilize any unused leave. If an Official chooses to be paid for any of their unused annual leave, OMB shall make such payment within 10 working days of receiving notice.

Historical and Statutory Notes

Source:

Band Ordinance 45-98, § 4.

CHAPTER 5

ETHICS CODE

Section

- 1151. Purpose.**
- 1152. Intent.**
- 1153. Definitions.**
- 1154. Conduct.**
- 1155. Behavior.**
- 1156. Conflicts of Interest.**
- 1157. Prohibited Activities.**
- 1158. Recording of Gifts.**
- 1159. Public Relations.**
- 1160. Complimentary Services.**
- 1161. Unity.**
- 1162. Authority.**
- 1163. Responsibility.**

Historical and Statutory Notes

The Preamble of Ordinance 19-98 (this Chapter and Chapter 6 of this Title) provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of establishing a body of law governing ethics and conduct of Mille Lacs Band of Ojibwe officials. The Band Assembly determines that it is in the best interest of the Band to provide protections and safeguards for our resources and people by enacting restrictions and requirements for officials and establishing a safer drug-free work place.”

§ 1151. Purpose.

The intent of this code of conduct is to maximize trust between Mille Lacs Band officials and the people they serve. The conduct of elected and appointed officials of the Mille Lacs Band, whether on or off duty, which adversely reflects on the Mille Lacs Band of Ojibwe is within the scope of this code of conduct.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 2.

§ 1152. Intent.

The intent of this code of conduct is to maximize trust between Mille Lacs Band officials and the people they serve. The conduct of elected and appointed officials of the Mille Lacs Band, whether on or off duty, which adversely reflects on the Mille Lacs Band of Ojibwe is within the scope of this code of conduct.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 2.

§ 1153. Definitions.

- (a) **Appointed Officials.** Means officials of the Mille Lacs Band, including but not limited to, the Commissioner of Administration, Assistant Commissioner of Administration, Commissioner of Corporate Affairs, Commissioner of Education, Commissioner of Community Development, Commissioner of Finance, Commissioner of Health and Human Services, Commissioner of Natural Resources, Solicitor General, staff members of the Office of the Chief Executive, the Justices and Judges of the Court of Central Jurisdiction, or any other person designated as a Senior Executive Staff employee or members of any board of an official Mille Lacs Band entity that are appointed by the Chief Executive or by Band Assembly members.
- (b) **Immediate Family.** Means a spouse, biological or adopted child, or members of the same household, or the mother, father, sister, or brother of the official.
- (c) **Elected Officials.** The Chief Executive, the Speaker of the Band Assembly, the District Representatives or members of any board of a Mille Lacs Band entity that are elected by Band members.

- (d) **Mille Lacs Band or Band.** The Mille Lacs Band of Ojibwe or any political subdivision thereof or any entity the majority of which is owned by the Band.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 3.

§ 1154. Conduct.

The conduct of elected and appointed officials of the Mille Lacs Band reflects on the character and integrity of the entire membership. Band officials should conduct themselves in a manner that does not discredit their position, the Band, or the people they represent. Officials with good character enhance the credibility of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 4.

§ 1155. Behavior.

Officials of the Mille Lacs Band hold positions of honor and respect which place them in a position of high public visibility and provide them with the opportunity and responsibility to be positive role models for the people they serve today as well as for future generations.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 5.

§ 1156. Conflicts of Interest.

It is the duty of all Mille Lacs Band officials to pursue and protect the best interests, needs, and welfare of the Band. Their personal interests or interests of their friends, immediate family, or businesses shall be subordinated to the larger, best interests of the Band. Basic honesty, sound judgment and common sense are requisite for avoiding conflicts of interest and perceived conflicts of interest.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 6.

§ 1157. Prohibited Activities.

The following activities are prohibited;

- (a) Misusing public office or position for private or personal gain.
- (b) Attempting to make or influence Mille Lacs Band or political subdivision decisions outside official processes.
- (c) Voting or participating in official decisions in matters where the official has a personal or economic interest greater than that of other Mille Lacs Band members or employees.
- (d) Soliciting or accepting Mille Lacs Band contracts for work without going through the prescribed procurement process.
- (e) Making unauthorized commitments or promises of any kind purporting to bind the Mille Lacs Band.
- (f) Improperly using Band resources for private or personal gain.
- (g) Practicing or supporting unfair employment or business practices, such as but not limited to nepotism, harassment or retaliation.
- (h) Improperly using their position to coerce or attempt to coerce anyone in order to further their personal interests or the interests of immediate family.
- (i) Interfering or attempting to interfere or inappropriately influence the Court in a pending case or case that may go before the Court.
- (j) Hindering, interfering or attempting to interfere in any civil or criminal investigation conducted by an appropriate official having jurisdiction to perform such an investigation.
- (k)
 - (1) Soliciting or accepting any gift, gratuity or service with a value of more than \$100.

- (2) An official shall not accept gifts, gratuities or services totaling in the aggregate more than \$500 in any fiscal year.
- (3) Nominal gifts, gratuities or services with a value of less than \$25 will not be considered for purposes of paragraph (k)(2).
- (l) Receiving compensation for work performed from any person or entity other than the Mille Lacs Band of Ojibwe or political subdivision thereof that could reasonably be perceived by band members as conflicting with Mille Lacs Band interests.
- (m) Knowingly or intentionally violating any other Mille Lacs Band statute.
- (n) Using a Band credit card for unauthorized purposes or personal reasons other than those expressly authorized by Band law.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 7.

§ 1158. Recording of Gifts.

- (a) All elected and appointed officials of the Mille Lacs Band receiving gifts in goods or services in excess of \$25, whether intended as a gift to the official or to the Band, shall record or cause to be recorded such gift with the Band Assembly.
- (b) Any gift in excess of \$100 to an official may only be accepted as a gift to the Band.
- (c) Gifts in goods or services from family members or pursuant to the customs and traditions of the Band are exempt from the provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 8.

§ 1159. Public Relations.

Good public relations require that Band officials cannot be separated from the people they were chosen to represent. They are bound, the same as other persons, to tell the truth, to respect

individuals and their property, and to abide by the requirements of the law. An orderly society cannot exist if individuals can choose to follow only the laws with which they agree.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 9.

§ 1160. Complimentary Services.

- (a) All elected and appointed officials are to pay for all services, that they receive, including meals, at any facility owned by the Band or any political subdivision thereof including the Corporate Commission of the Band except as expressly authorized under Band law.
- (b) Complimentary services may occur only under the following restrictions:
 - (1) When hosting vendors, potential vendors, dignitaries, officials of any non-Band government, guests of the Mille Lacs Band or for any other bona fide Mille Lacs Band governmental purpose; and
 - (2) Under no circumstances shall Band officials provide complimentary services to another Band official or themselves unless governmental business is being transacted or another non-Band party is being hosted.
- (c) All complimentary slips shall contain the following:
 - (1) name(s) of person(s) being hosted, if applicable;
 - (2) purpose/reason for the transaction;
 - (3) entity the guest represents if applicable;
 - (4) date;
 - (5) program budget to be charged which must have sufficient funds available;
 - (6) signature of the official authorizing the comp.
- (d) The Chief Executive, and Executive Officers as defined in 4 MLBS § 4 and as amended, as well as any full-time employee within the Executive Branch expressly authorized by the Chief Executive shall be permitted to sign complimentary slips.

- (e) The Secretary/Treasurer, District Representatives of the Band Assembly and the Commissioner of Finance as well as any full-time employee within the Legislative Branch expressly authorized by the Secretary/Treasurer shall be permitted to sign complimentary slips.
- (f) The Chief Justice as well as any full-time employee within the Judicial Branch expressly authorized by the Chief Justice shall be permitted to sign complimentary slips.
- (g) Any complimentary slip not authorized or in conformity with this Title or any other law of the Band may be recovered from the official or employee as the case may be or their estate by:
 - (1) Set off against accrued pay, retirement credit, or any other amount do the official/employee;
 - (2) Deduction from any amount due from the Mille Lacs Band;
 - (3) Such other method as provided for by law.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 10.

§ 1161. Unity.

Dedication and cooperation inspire unity. Unity is essential in order to ensure the long-term survival of our culture, our people and our nation. In order to promote unity, Band officials must be committed to:

- (a) Demonstrating the highest standards of personal integrity, truthfulness and honesty in all their activities in order to inspire public confidence and trust.
- (b) Constructively promoting and supporting open communications with the membership and employees in a positive and professional manner.
- (c) Serving the membership with respect, concern, courtesy and responsiveness, recognizing that service to the Band and its membership is more important than service to oneself.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 11.

§ 1162. Authority.

- (a) The Joint Session of the Band Assembly described in 3 MLBS § 24 shall have the authority to issue oral or written reprimands or to suspend an official with or without pay for any violation of this code. Such authority shall not serve to infringe upon any other disciplinary, civil or criminal action that may otherwise be available.
- (b) Any elected official of the Mille Lacs Band, found by a majority of the Joint Session, after appropriate hearing, to be in violation of this code may be subject to the provisions and penalties set forth in this code of conduct and to any and all other remedies that may otherwise be available.
- (c) Any appointed official of the Mille Lacs Band found by a majority of the Joint Session, after appropriate hearing, to be in violation of this code may be subject to the provisions and penalties set forth in this code of conduct and to any and all other remedies that may otherwise be available.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 12.

§ 1163. Responsibility.

- (a) It is the responsibility of all Mille Lacs Band officials and employees to report any violations of this code. A Joint Session shall be convened to hear matters involving violations of this code upon a written petition signed by three or more members of the Joint Session.
- (b) It is the responsibility of all Band officials and employees to disclose waste, fraud, abuse or corruption to appropriate Mille Lacs Band authorities.

Historical and Statutory Notes

Source:

Band Ordinance 19-98, Chapter 1, § 13.

CHAPTER 6

[RESERVED]

Historical and Statutory Notes

Section 2 of Title I of Ordinance 14-10 provides: “Chapter 6, entitled “Drug Free Work Place,” of Title 6 of the Mille Lacs Band Statutes Annotated is repealed in its entirety. The Band’s Drug and Alcohol policy, as set forth in the MLBO Personnel Policy and Procedures Manual adopted in accordance with Section 1 above, is hereby approved.”

Section 3 of Title I of Ordinance 14-10 provides: “The Band Assembly reserves the right to amend the MLBO Personnel Policy and Procedures Manual at any time.”

Cross References

Personnel Policy and Procedures, *see* 6 MLBS Ch. 1.

CHAPTER 7

INDEMNIFICATION

Section

- 2001. Definitions.**
- 2002. Indemnification Mandatory; Standard.**
- 2003. Advances.**
- 2004. Reimbursement to Witnesses.**
- 2005. Determination of Eligibility.**
- 2006. Indemnification of Other Persons.**
- 2007. Scope.**

Historical and Statutory Notes

The title of Ordinance 08-08 is: “An Ordinance adding Chapter 7 to Title 6 of the Mille Lacs Band Statutes Annotated (Government Employees) for the purpose of providing indemnification of elected and appointed officials.”

The preamble of Ordinance 08-08 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of adding Chapter 7 to Title 6 of the Mille Lacs Band Statutes Annotated (Government Employees) to be entitled “Indemnification.”

§ 2001. Definitions.

For purposes of this Chapter:

- (a) **“Act or omission in the official capacity of a Band Official”** means any act or omission under color of such person’s authority as a Band Official, without regard to any ultimate determination regarding the limits of such person’s actual authority as a Band Official.
- (b) **“Band governing body”** means the Band’s Chief Executive and Band Assembly.
- (c) **“Band Official”** means (i) each person holding the elective office as a member of the Band Assembly or Chief Executive of the Non-Removable Mille Lacs Band of Chippewa Indians, and (ii) any person serving in an appointive position with the Legislative Branch, Executive Branch, or Judicial Branch of the Band, who has been approved to receive indemnification pursuant to this Chapter by a majority of the Band governing body pursuant to Section 2003 of this Title.
- (d) **“Proceeding”** means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding relating to or arising out of a person’s acts or omissions as a Band Official, but shall not include any proceeding initiated by the Band.
- (e) **“Special legal counsel”** means legal counsel selected by a majority of the Band governing body, who is not representing the Solicitor General whose indemnification is in issue.

Historical and Statutory Notes

Source:

Band Ordinance 08-08, § 1.

§ 2002. Indemnification Mandatory; Standard.

- (a) The Band shall indemnify any present or former Band Official made or threatened to be made a party to a proceeding by reason of any alleged act or omission of such person in his or her official capacity as a Band Official against judgments, penalties, fines, settlements, and reasonable expenses, including attorney’s fees and disbursements, incurred by such present or former Band Official in connection with the proceeding, if, with respect to such alleged acts or omissions, the present or former Band Official:
 - (1) has not been indemnified by another organization or entity for the same liability described in the preceding paragraph with respect to the same acts or omissions;

- (2) acted in good faith and without actual knowledge that such act or omission was beyond his or her authority as a Band Official;
 - (3) received no improper personal benefit;
 - (4) in the case of a criminal proceeding, did not have reasonable cause to believe the act or omission was unlawful; and
 - (5) reasonably believed that the act or omission was in the best interests of the Band.
- (b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria in this Section.

Historical and Statutory Notes

Source:

Band Ordinance 08-08, § 2.

§ 2003. Advances.

- (a) If a present or former Band Official is made or threatened to be made a party to a proceeding by reason of any alleged act or omission in the official capacity of such person as a Band Official, such present or former Band Official is entitled, upon written request to the Band, to payment or reimbursement by the Band of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - (1) upon receipt by the Solicitor General of (a) a written affirmation by the person of a good faith belief that the criteria for indemnification in § 2002 of this Title have been satisfied and (b) a written undertaking by the person to repay the amounts paid or reimbursed by the Band, if it is definitively determined by the Solicitor General, or the Court of Central Jurisdiction upon appeal pursuant to § 2005 of this Title, that the criteria for indemnification have not been satisfied; and
 - (2) after a determination, pursuant to § 2005 of this Title, by the Solicitor General or Court of Central Jurisdiction, that the facts then known would not preclude indemnification under this section.
- (b) The written undertaking required by subparagraph (a)(1) of this section shall be an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

- (c) If the person seeking an advance under this section is the Solicitor General, the Solicitor General shall submit the documents described in subparagraph (a)(1) of this section to special legal counsel selected by a majority of the Band governing body. Special legal counsel shall then make the initial determination described in subparagraph (a)(2) of this section, subject to appeal to the Court of Central Jurisdiction pursuant to § 2005 of this Title.
- (d) If the person seeking an advance under this section is a former or present appointed official, it shall be the right of the majority of the Band governing body to decide whether such indemnification shall be approved.

Historical and Statutory Notes

Source:

Band Ordinance 08-08, § 3.

§ 2004. Reimbursement to Witnesses.

This section does not require, or limit the ability of, the Band to reimburse expenses, including attorney's fees and disbursements, incurred by a person, including a present or former Band Official, in connection with an appearance as a witness in a proceeding at a time when such person has not been made or threatened to be made a party to a proceeding.

Historical and Statutory Notes

Source:

Band Ordinance 08-08, § 4.

§ 2005. Determination of Eligibility.

- (a) Determinations as to (i) whether the criteria set forth in § 2002 of this Title concerning indemnification of a present or former Band Official, other than the Solicitor General, have been satisfied, or (ii) whether such present or former Band Official is entitled to advances under § 2003 of this Title shall be made:
 - (1) by the Solicitor General; or
 - (2) if an adverse determination is made by the Solicitor General, by the Court of Central Jurisdiction, upon application of the present or former Band Official and notice as the Court requires.
- (b) Determinations as to (i) whether the criteria set forth in § 2002 of this Title concerning indemnification of a present or former Solicitor General have been

satisfied, or (ii) whether a present or former Solicitor General is entitled to advances under Section 2003 of this Title shall be made:

- (1) by special legal counsel; or
- (2) if an adverse determination is made by special legal counsel, by the Court of Central Jurisdiction, upon application of the present or former Solicitor General and notice as the Court requires.

Historical and Statutory Notes

Source:

Band Ordinance 08-08, § 5.

§ 2006. Indemnification of Other Persons.

This section does not limit the power of the Band to indemnify other persons.

Historical and Statutory Notes

Source:

Band Ordinance 08-08, § 6.

§ 2007. Scope.

This section does not apply to any proceedings to resolve conflicts within the Executive, Legislative or Judicial Branch nor does it apply to any proceedings between the three (3) branches of Band government, as described in 4 MLBS § 19.

Historical and Statutory Notes

Source:

Band Ordinance 08-08, § 7.

TITLE 7 – PROCUREMENT

Section

1. Purchasing.
2. Reservation of Right of Amendment.
3. Procurement Procedures and Standards.
4. Standards of Conduct.
5. Open and Free Competition.
6. Solicitation of Offers.
7. Contracting with Small and Minority Firms, Women’s Business Enterprises.
8. Contract Pricing.
9. Requisition.
10. Small Purchase Procedures.
11. Competitive Sealed Bids; Formal Advertising.
12. Competitive Sealed Bids; Generally.
13. Negotiated Procurement.
14. Competitive Negotiation.
15. Responsible Contractors.
16. Procurement Records.
17. Bonding.
18. Environmental Standards.
19. Contract Provisions.
20. General Services Administration Supply Sources.
21. Indian Preference.
22. Equal Opportunity.
23. Use of Indian Businesses.
24. Buy Indian Provisions.
25. Subcontracting.
26. Contract Administration.
27. Work Statements.
28. Changes.
29. Termination.
30. Warranties.
31. Audit.
32. Covenant Against Contingent Fees.
33. Notice.
34. Mille Lacs Band Responsibilities.
35. Disputes.
36. Jurisdiction.
37. Construction and Severability.

Historical and Statutory Notes

The Preamble of Band Ordinance 17-98 provides:

“It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of establishing a body of law governing purchases by the Mille Lacs Band of Ojibwe. The Band Assembly determines that it is in the Band’s best interest to provide protections and safeguards for Band assets by enacting effective and efficient purchasing processes. This act repeals and replaces Title 7 of the Mille Lacs Band Statutes Annotated in its entirety.”

Band Ordinance 17-98, § 37 provides:

“Section 37. Construction and severability. The provisions of this title shall be liberally construed so as to effectuate the purpose thereof. The provisions of this title shall be several and if any phrase, clause, sentence, or provision is held invalid by a court of competent jurisdiction, the validity of the remainder of this title and the applicability thereof shall not be affected thereby.

The title of Band Ordinance 03-06 is “An ordinance amending 7 MLBSA § 17 of the Procurement Statute to more specifically outline the guidelines for bonding requirements of construction projects.”

The Preamble of Band Ordinance 03-06 provides:

“It is enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe, for the purpose of amending Title 7, section 17 of the Mille Lacs Band Statutes Annotated, in order to promote compliance with bonding while removing obstacles to the Band member contractor’s ability to maintain business relations with Community Development.”

Band Ordinance 03-06, Section 1, paragraphs 1 and 2 provide:

“1. This Ordinance repeals and replaces in its entirety 7 MLBSA § 17 (Bonding) to more specifically outline the guidelines for bonding requirements of construction projects.

2.The Band Assembly acknowledges that the existing Bonding requirements are too general in nature and therefore an amendment is needed.”

Band Ordinance 03-06, Section 1, paragraph 4, provides:

“4. Sovereign Immunity. Nothing contained in this Ordinance shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe.”

The Preamble of Band Ordinance 44-09 provides:

“It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending the Procurement law of the Band Government to require that any and all contract addendum(s) for goods or services totaling \$25,000.00 must be approved by the Band Assembly prior to implementation.”

The title of Ordinance 15-14 is:

“An ordinance amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; amending Sections 2, 4, 6 and 10 in Title 18 of the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 in the Mille Lacs Band Statutes Annotated; and repealing any inconsistent Indian Preference

language in any other Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

The preamble of Ordinance 15-14 provides:

“It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; Sections 2, 4, 6 and 10 in Title* in the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated (the Band’s Indian Employment Rights Ordinance or ‘TERO’); and repealing any inconsistent Indian Preference language in Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

*So in original. Probably should be Title 18.

§ 1. Purchasing.

- (a) All public service contracts awarded by the Band or any political subdivision and that is performed within the territorial jurisdiction of the Band shall only be awarded to businesses licensed under the laws of the Mille Lacs Band.
- (b) In order to protect the economic security of the Band and its political subdivisions, contracts may only be awarded to businesses organized pursuant to the laws of the Mille Lacs Band, the laws of a state of the United States or the laws of a federally recognized Indian tribe.
- (c) Authority to initiate a purchase or contract action on behalf of the Mille Lacs Band or any of its political subdivisions is hereby delegated by the Band Assembly.
- (d) The Corporate Commission of the Mille Lacs Band is expressly exempt from all provisions of this Title.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 1.

§ 2. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend or repeal the several provisions of this title, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 2.

§ 3. Procurement Procedures and Standards.

- (a) The Mille Lacs Band and its political subdivisions will use its own procurement procedures which reflect applicable law and regulations, provided that procurements for Federal and state assistance programs conform to the standards of applicable law.
- (b) The Mille Lacs Band hereby establishes standards and guidelines for procuring supplies, equipment, construction and services, complying with the provisions of all applicable law.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 3.

Amendments

The Preamble and § 1 of Band Ordinance 29-00 provides:

“Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending section 3 of the Procurement Procedures and Standards. (Ordinance 17-98).”

“Section 1: Amendment to section 3. Procurement Procedures and Standards. Section 3 is hereby amended to insert a new subsection as follows:

- (c) Notwithstanding any other provisions of the Mille Lacs Band of Ojibwe procurement law, to the contrary the following procedures and standards shall apply to contracting for services by any expert witness whose services are necessary in connection with any criminal, civil or administrative proceeding.
 - (1) Retainer agreements for expert witness services shall be prepared and executed by the attorney representing the client in connection with any criminal, civil, or administrative proceeding. The attorney shall assure that the retainer agreement contains provisions that preserve the attorney client privilege and evidentiary privilege recognized as the attorney work product doctrine.
 - (2) The Mille Lacs Band of Ojibwe Commissioner of Finance is authorized to prepare and process any disbursement of appropriated funds to pay the costs associated with any expert witness services.
 - (3) Subsection (c) of this Act shall expire December 31, 2000.
- (d) Office of the Solicitor General will notify Band Assembly of expiration of this Act before December 31, 2000.

§ 4. Standards of Conduct.

- (a) Mille Lacs Band or political subdivision officials and employees who are engaged in procuring goods or services shall not solicit or accept gratuities, favors or anything of monetary value in excess of \$10 from contractors or potential contractors.
- (b) All Mille Lacs Band or political subdivision officials, employees and agents who are involved in purchasing or contracting activities must follow the standards of conduct set forth in applicable Band law and regulations.
- (c) Mille Lacs Band or political subdivision officials, employees and agents will refrain from participating in purchasing or contracting in which a conflict of interest, real or apparent, could be involved. Such a conflict arises when the official, employee or agent has a financial or other interest in a firm being considered for award of a purchase order or contract. A conflict also arises when an immediate family member (mother, father, brother, sister, husband, wife, son or daughter or in-laws) or a business partner or associate of the Band officer, employee or agent has an interest in a firm.
- (d) Any Mille Lacs Band or political subdivision official, employee or agent who has unknowingly obtained a benefit from a purchase order or contract awarded will immediately, upon discovery, report the benefit to his or her immediate supervisor. Failure to report such benefit is a breach of the ethical standards governing the Band procurement activities.
- (e) Officials, employees or agents of the Band or political subdivisions shall not knowingly use confidential information for actual or anticipated personal gain.
- (f) Band or political subdivision officials, employees and agents engaged in procurement activities will at all times act in good faith when dealing with actual or potential contractors.
- (g) Any Band or political subdivision official, employee, or agent who has doubts about the propriety of an action or decision shall refrain from taking such action or making such decision until consulting with a supervisor. When advice of counsel would be helpful and proper, the official, employee or agent should seek it.
- (h) All persons who are employed by or who represent the Band or a political subdivision thereof are responsible for complying with the Band's purchasing and contracting policies and for following all applicable procedures. All such persons will make purchases only through proper procedures and only after obtaining necessary approvals.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 4.

§ 5 Open and Free Competition.

All procurement transactions regardless of whether by sealed bids or by negotiation and without regard to dollar amount, shall be conducted in a manner that provides maximum open and free competition consistent with applicable provisions of this Title. Procurement procedures shall not be used to restrict or eliminate competition.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 5.

§ 6. Solicitation of Offers.

- (a) The Mille Lacs Band's written selection procedures shall provide the following procedural requirements. Solicitation of offers, whether by competitive sealed bids or competitive negotiations shall include:
 - (1) Incorporation of a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features unduly restricting competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards which it must conform to. Detailed product specification should be avoided when possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name" or equal description may be used as a means to define the performance or other salient requirement. The specific features of the name brand which must be met by a vendor shall be clearly stated.
 - (2) Clearly set forth all requirements which vendors must fulfill and all other factors to be used in evaluating bids or proposals.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 6.

§ 7. Contracting with Small and Minority Firms, Women's Business Enterprises.

Best efforts will be made to use small business and minority owned business for supplies and services. This provision shall apply only after Indian preference requirements have been met, and which are not inconsistent with other provisions of this Title.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 7.

§ 8. Contract Pricing.

The Mille Lacs Band and its political subdivisions shall perform some form of cost or price analysis in connection with every procurement action including contract modification. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs for incurred or cost estimates included in negotiated prices are consistent with federal grant purchasing principals.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 8.

§ 9. Requisition.

- (a) The basic purpose of the purchasing and contracting process is to support Mille Lacs Band or political subdivision program activities by obtaining the items and services needed. A requisition is the internal document that conveys the program activity's request for supplies, equipment or services. It officially initiates a particular purchasing or contracting action. No purchase or contract may be initiated without a requisition.
- (b) Preparation of a requisition is the responsibility of Mille Lacs Band program personnel. Those personnel must ensure that the requisitions submitted provide a clear, accurate and complete description of program requirements. Additionally, they must ensure, prior to submitting a requisition that purchases of items or services are authorized by the program budget and that all necessary approvals have been obtained.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 9.

§ 10. Small Purchase Procedures.

- (a) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for the procurement of services, supplies or other property, costing in the aggregate not more than \$25,000.

- (b) Competition will be obtained whenever the price of an item is estimated to exceed \$5000. Price or rate quotations shall be obtained from at least three (3) qualified sources if available.
- (c) A purchase order is issued under small purchase procedures by a document conveying the Mille Lacs Band's or political subdivision's offer to buy. If a seller then accepts the offer, the Purchase Order becomes a binding agreement having the same force and effect as a contract. The following provisions must be stated on the back or attached to the copy of the purchase order:
 - (1) Change Clause: Reserves for the Mille Lacs Band of Ojibwe or political subdivision the right to change a purchase order within reason.
 - (2) Termination for Convenience: The Mille Lacs Band may terminate an order at any time prior to delivery of the requested product or service if such action would be in the best interest of the Band.
 - (3) Termination For Default: The Mille Lacs Band may, in addition to any other remedy it may have, terminate an order for default, if the supplies or equipment delivered are not received on the due date(s) or are defective.
 - (4) The Contractor shall provide any commercial warranty normally offered to the public. The Band shall not accept delivery of supplies and equipment "as is" unless previously agreed to in writing.
 - (5) Audit: To the extent permitted by applicable law, the contractor agrees that the Comptroller General of the United States and other government representatives or appropriate Band officials may examine those records related to the equipment or supplies purchased.
 - (6) Discounts: All discounts from vendors must be listed by vendors on the invoice and credited to the procuring department.
- (d) Approval and signatures required on all purchase orders:
 - (1) \$.01-\$1999.99 – Purchasing Clerk
 - (2) \$2000-\$9999.99 Purchasing Clerk and Finance Officer.
 - (3) \$10,000-\$25,000.00 Commissioner of Finance.
 - (4) \$25,000.01 and above Chief Executive and Secretary-Treasurer
- (e) A change in a Purchase Order of up to 5% may be made by a commissioner or branch leader provided sufficient funds are available for purchases made pursuant to this section.

- (f) A purchase order shall not be created if there are insufficient funds in a budget line-item except in the case of a public emergency as determined by the Chief Executive and the Secretary-Treasurer.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 10.
Band Ordinance 09-20.

§ 11. Competitive Sealed Bids; Formal Advertising.

- (a) Formal advertising with an adequate purchase description, sealed bids and public openings shall be the required method of procurement unless negotiated procurement pursuant to Section 14 of this Title is necessary to accomplish sound procurement. However, procurement of \$25,000 or less need not be so advertised. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the Mille Lacs Band price and other factors considered. Any and all bids may be rejected when it is in the Mille Lacs Band's best interest to do so.
- (b) "Formal Advertising" shall mean placing notice in a conspicuous public place in all districts for a period of at least fourteen (14) days.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 11.

§ 12. Competitive Sealed Bids; Generally.

- (a) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price and best meets the Band's needs.
- (b) In order for formal advertising to be feasible, appropriate conditions must be present, including, at a minimum, the following:
 - (1) A complete and accurate list of specifications or a thorough purchase description.
 - (2) Two or more responsible suppliers are willing and able to compete effectively for the business.

- (3) The procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.
- (c) If formal advertising is used for procurement the following requirements shall apply:
- (1) A sufficient time prior to the date set for opening of the bids. Bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.
 - (2) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.
 - (3) All bids shall be opened publicly at the time and place stated in the invitation for bids.
 - (4) A firm-fixed price contract shall be awarded by written notice to the responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bids when prior experience of the contractor indicates that such discounts are available.
 - (5) Any or all bids may be rejected when there are sound documented business reasons and it is in the best interest of the Band to do so.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 12.

§ 13. Negotiated Procurement.

- (a) Procurement may be negotiated if it is impractical and unfeasible to use formal advertising procurements and if one of the following situations exist:
 - (1) Public exigency will not permit the delay incident to advertising; or
 - (2) The contract is for personal or professional services or for any services rendered by a university, college or other educational institution; or
 - (3) No acceptable bids have been received after formal advertising; or

- (4) The purchase is for highly perishable goods or medical supplies, for materials or services where the prices are established by law; for technical items or equipment requiring standardization or interchangeability of parts with existing equipment; for experimental developments or research work; for supplies purchased for authorized resale; and for technical or specialized supplies requiring substantial initial investment; or
 - (5) Otherwise authorized by Band statute.
- (b) Notwithstanding the existence of circumstances justifying negotiations, competition shall be obtained to the maximum extent practicable.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 13.

§ 14. Competitive Negotiation.

- (a) In competitive negotiation, proposals are requested from at least three (3) sources and the request for proposals is publicized, submitting offers, and either a fixed-price or cost reimbursable type contract is awarded, as appropriate.
- (b) If competitive negotiation is used for a procurement the following requirements shall apply:
 - (1) Proposals shall be solicited from at least three (3) sources to permit reasonable competition consistent with the nature and requirements of the procurement. The request for proposal shall be publicized and reasonable request by other sources to complete shall be honored to the maximum extent practicable.
 - (2) The request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.
 - (3) The Band shall provide a mechanism for technical evaluation of the proposals received, determining responsible vendors for the purpose of written or oral discussion, and selection for a contract award.
 - (4) Awards may be made to a responsible contractor whose proposal will be most advantageous to the Mille Lacs Band, price and other factors considered. Unsuccessful offerors shall be notified promptly.
- (c) The Mille Lacs Band may utilize competitive negotiation procedures for procurement of professional services, whereby competitors are selected, subject to negotiation of fair and reasonable compensation.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 14.

§ 15. Responsible Contractors.

Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 15.

§ 16 Procurement Records.

- (a) The Mille Lacs Band will maintain records in sufficient detail to track the significant history of all procurements over \$5000. The records shall include, but are not limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection and the basis for the price.
- (b) Procurement records or files for negotiated purchases over \$25,000 will provide justification for use of negotiations in lieu of advertising, contractor selection and the basis for the price.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 16.
Band Ordinance 09-20.

§17. Bonding.

- (a) In construction contracts that are federally funded or deemed commercial, bonding is required. These types of contracts shall demand a performance bond of not less than twenty percent (20%) of the total contract price, but not to exceed \$500,000.00. A performance bond requirement is to ensure that, if a contractor defaults, the Band may request that the surety pay the expenses incurred to complete the construction contract.
- (b) In addition, all construction contracts identified as federally funded or commercial, shall be covered by a payment bond equal to one payment installment to cover

subcontractors/ suppliers as determined by the Contracting Officer or his agents. The payment bond must contain language stating that if the contractor fails to make a payment to its subcontractors/suppliers, the surety will make the necessary payment.

- (c) For all Band funded residential construction projects, a performance bond is required for contracts in excess of \$50,000.00. The performance bond shall be at a minimum twenty (20%) percent of the contract price, but not in excess of \$500,000.00.

Historical and Statutory Notes

Source

Band Ordinance 03-06, § 1, Paragraph 3.

§ 18. Environmental Standards.

Contracts in excess of \$10,000.00 shall contain a provision which requires the recipient of the contract to agree to comply with all applicable standards, orders, or regulations issued regarding Environmental Protections and as amended. Violations shall be reported to the Bureau of Indian Affairs and the Regional Office of the Environmental Protection Agency or other appropriate agencies.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 18.

§ 19. Contract Provisions.

- (a) In addition to provisions defining a sound and complete procurement contract, the Mille Lacs Band, will include the following contract provisions or conditions in all procurement contracts and subcontracts.
 - (1) Contracts other than small purchases shall contain provisions or conditions which allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
 - (2) All contracts in excess of \$10,000.00 shall contain suitable provisions for termination by the Mille Lacs Band and the basis for any settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
 - (3) All contracts and sub-contracts for construction or facility repair shall include a provision for compliance with the Copeland “Anti-Kickback Act”

(18 USC 874) and as supplemented in the Department of Labor regulations. This Act provides that each contractor or sub-contractor shall be prohibited from including, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Mille Lacs Band will prosecute or report all suspected or reported violations to appropriate law enforcement officials.

- (4) When required by Federal Grant Program law or Band statute, all construction contracts in excess of \$5000 awarded by the Mille Lacs Band or any of its political subdivisions shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to 276a-7 and as amended) and as supplemented by the Department of Labor regulations. Under this Title, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Mille Lacs Band shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination.
- (5) When applicable, all contracts awarded by the Mille Lacs Band and sub-contracts in excess of \$5000 for construction which involve the employment of laborers shall include a provision for compliance with the Contract Work Hours and Safety Standards Act (40 USC 327 to 330) and as supplemented by the Department of Labor regulations. Each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of eight (8) hours and a standard work week of forty (40) hours. Work in excess of the standard work day or work week is permissible provided that the worker is compensated at a rate of no less than one and one half (1 1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or forty (40) hours in the work week. The Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of information.
- (6) The contract shall include notice of requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract and of requirements and regulations pertaining to copyrights and rights in data.

- (7) All negotiated contracts, except those awarded by small purchase procedures, awarded by the Mille Lacs Band shall include a provision that the Mille Lacs Band, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract, for the purpose of making audits, examination, excerpts and transcriptions. The Mille Lacs Band shall require contractors to maintain all required records for three years after the Mille Lacs Band makes final payments and all other pending matters are closed.
- (8) Contracts and subcontracts in excess of \$100,000.00 shall contain a provision which requires compliance with all applicable standards, orders or requirements issued under the Clean Air Act (42 USC 1857(h) and as amended, the Clean Water Act (33 USC 1368) and as amended, Executive Order 11738, and Environmental Protection Agency regulations which prohibit the use under non-exempt Federal Contracts, grants or loans of facilities included on the EPA list of Violating Facilities. The provision shall require reporting of violations to the grantor agency.
- (9) Contracts shall recognize mandatory standards and policies relating to energy efficiency requirements issued in compliance with the Energy Policy and Conservation Act (42 USC § 6321).
- (10) Contracts and subcontracts awarded by the Mille Lacs Band of Ojibwe shall contain a section that prohibits the assignment of any rights or interests or obligations under the contract without the written approval of the contracting Officer.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 19.

§ 20. General Services Administration Supply Sources.

When the Mille Lacs Band is performing services under cost reimbursement contracts the Band shall be entitled to use the General Services Administration Supply sources to the extent allowable by law.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 20.

§ 21. Indian Preference.

- (a) A contractor awarded a public service contract shall give preferential employment under the contract, including subcontracts thereunder, to qualified Indians and to the extent feasible and consistent with the efficient performance of the contract, provide employment and training opportunities to Indians regardless of age, religion or sex that are not fully qualified to perform under the contract. The contractor shall comply with all Indian preference requirements established by the Mille Lacs Band under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this Title.
- (b) If a contractor or any of its subcontractors are unable to fill employment openings after giving full consideration to Indians as required in paragraph (a), these employment openings may then be filled by other persons under the conditions set forth in the Equal Employment Opportunity clause of the contract. The contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.
- (c) Indian Preference shall mean awarding a contract or a subcontract with priority first given to qualified Mille Lacs Band Members. The second priority shall be given to qualified members of another federally recognized Indian Tribe. The third priority shall be given to all other qualified persons.
- (d) Indian Preference shall also mean that contracts bid by Band member contractors that are within 10% of the lowest competitive bid shall be given the opportunity to negotiate an acceptable bid.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 21.
Band Ordinance 15-14, Title IV, § 1.

§ 22. Equal Opportunity.

- (a) During the performance of a contract and after complying with the Indian Employment Preference clause of the contract the contractor agrees as follows:
 - (1) The contractor will not discriminate against any employee or applicant for employment because of race, age, religion or sex. The contractor will take affirmative action that applicants are employed and that employees are treated during employment without regard to their race, age, religion or sex. Such action shall include, but not be limited to the following: Employment upgrading; demotion or transfer; layoff or termination; rates of pay or other forms of competition, including apprenticeship.

- (2) The contractor will, in all solicitation or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, religion or sex.
- (3) The contractor will include provisions of these paragraphs in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Mille Lacs Band may direct to enforce such provisions, including sanctions for non-compliance. However, if the contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the Mille Lacs Band to enter such litigation to protect the interest of the Mille Lacs Band.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 22.

§ 23. Use of Indian Businesses.

- (a) As used in this section, the term “Indian Businesses” means Indian organizations or an Indian owned economic enterprise as defined in the code of Federal Regulations or the laws of the Mille Lacs Band.
- (b) The Mille Lacs Band and its political subdivisions shall give preference in awarding contracts and subcontracts to “Indian Businesses.”
- (c) The contractor agrees to give preference to qualified Indian businesses in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The contractor shall comply with any preference requirements regarding Indian businesses established by the Mille Lacs Band receiving services under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this Title.
- (d) If no Indian businesses are available under the conditions in paragraph (c) above, the contractor agrees to accomplish the maximum amount of subcontracting, as the contractor determines is consistent with efficient performance of the contract, with small business concerns or minority business. The contractor is not, however, required to establish a small business, labor surplus or minority business subcontracting program

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 23.

§ 24. Buy Indian Provisions.

The Mille Lacs Band of Ojibwe, and political subdivisions, as well as all contractors and subcontractors who conduct business on lands under the jurisdiction of the Mille Lacs Band of Ojibwe pursuant to a contract or subcontract with the Band or political subdivision thereof shall comply with the provisions of the Buy Indian Act (25 USC 47) and regulations promulgated thereunder.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 24.

§ 25. Subcontracting.

- (a) Any contract proposal or plan of operations submitted by a tribal organization which proposes to do a portion of the work by subcontract shall identify the purpose and scope of the proposed subcontract, the manner in which the subcontractor will be selected, and the estimated cost of the subcontract.
- (b) Preference shall be given to qualified Indian businesses in awarding subcontracts, and the contractor shall comply with any preference requirements established by the Mille Lacs Band receiving services under the contract.
- (c) If no Indian business are available under the conditions in the above paragraph, the contractor shall accomplish the maximum amount of subcontracting, as is consistent with efficient performance of the contract, with small business concerns labor surplus area concerns and minority business enterprise.
- (d) Subcontract opportunities shall be advertised or negotiated in a manner which provides free and open competition to the extent provided for by law. Subcontracts shall be awarded in accordance with sound business practices and the preferential requirements in this Title.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 25.

§ 26. Contract Administration.

- (a) A system for contract administration will be maintained to assure contractor conformance with terms, conditions and specifications of the contracts or orders and to assure adequate and timely follow-up of all purchases.
- (b) All contracts for services and materials shall be reviewed and approved in the following manner:
 - (1) The Office of Management and Budget shall review all contracts to ensure that sufficient budgetary and payment term considerations are in place.
 - (2) The Solicitor General shall review all contracts over \$5,000.00.
 - (3) Administrative Policy Board approval is required for all executive branch contracts over \$5,000.00.
 - (4) Band Assembly ratification is required for all contracts in excess of \$25,000.00, including any and all contract addendum(s) that in total increase costs to \$25,000.00.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 26.
Band Ordinance 44-09, § 1.

§ 27. Work Statements.

- (a) Work statements must satisfy clarity, precision, and completeness. The following requirements will be included in the work statements:
 - (1) Objectives: to precisely identify desired end objectives of the project and associated requirements.
 - (2) Context for project: list background information that will aid in understanding the nature and origin of the program. Include a brief summary of objectives, program authority, major programs and goals set by statute if relevant. Describe the relationship of the effort to other programs and goals.
 - (3) Acceptance: identify milestones or management control points in the sequence of tasks where progress review, approvals, acceptances or rejections are to occur. Establish relevant and well-defined baselines for performance measurement. These baselines will serve at least four purposes including:

- (i) Prevention of contractor from drifting into areas not pertinent to the effort;
 - (ii) Measure the results of completed work;
 - (iii) Assist in defining whether or not subsequent changes or redirection of effort falls within the original scope of work;
 - (iv) Assist the program official and the contracting officer in monitoring the progress of the work. Monitoring is particularly important for phase-type contracts where it is necessary to detect unsatisfactory performance early. It will allow a Project Officer to inform procurement personnel of unpromising contractor actions that should be dealt with promptly before their effect compromises the entire contract effort.
- (4) Responsibility: identify all Mille Lacs Band or political subdivision and Contractor participation or cooperation that is needed for the success of the project, as well as the nature and extent of all task responsibilities. All tasks requiring Mille Lacs Band support (e.g., Band-furnished equipment, facilities, materials and extra laboratory government assistance) should be stated specifically. The nature and requirements of Band support to be provided also should be presented specifically.
- (5) Schedule: generate a schedule for the sequence of tasks to be performed by a contractor and a similar schedule for related responsibilities of the Mille Lacs Band.
- (6) Delivery: identify delivery requirements precisely and schedule a delivery date for each. Include details about the type and quantity of all deliverables. (State precisely what a contractor is to deliver at specified times as the work progresses and on completion of the next contract performance.)

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 27.

§ 28. Changes.

- (a) The Band’s Contracting Officer may at any time, by written order, make changes within the general scope of the contract to any one or more of the following:

- (1) drawings, designs or specifications when the supplies to be furnished are to be specially manufactured for the Band in accordance with drawings, designs or specifications; or
 - (2) methods of shipment or packing; or
 - (3) place of delivery; or
 - (4) the scope of the service performed; or
 - (5) a change in the product delivered.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for performance of any part of the work under the contract, the Contract Officer is authorized to make an equitable adjustment of up to 5% in the contract price (provided sufficient funds are available), the delivery schedule, or both. Any and all modifications of a contract, which combined total \$25,000.00, shall be approved by the Band Assembly. Failure of the parties to agree to any such adjustment shall be a dispute under the Disputes Clause. However, nothing in either this clause or the Disputes Clause shall excuse the contractor from proceeding on the contract as changed.
- (c) The Contracting Officer shall be the respective Commissioner or leader of a respective branch or political subdivisions.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 28.
Band Ordinance 44-09, § 2.

§ 29. Termination.

- (a) The Band may cancel a contract at any time with or without cause. Termination for convenience should be included in all contracts.
- (1) The Band may terminate an order at any time prior to delivery of the requested product or service if such action would be in the best interest of the Band. If the contractor has begun work under an order, it shall so notify the Band Contracting Officer and submit a proposal for any necessary partial payment, restocking charge or other compensation. The Contracting Officer shall determine what compensation, if any, should be paid. Such determination shall be final unless a claim is made pursuant to the Disputes clause of the contract.

- (2) The Contracting Officer, by written notice may terminate the contract, in whole or in part, when it is in the Band's best interest. If the contract is terminated, the Band shall be responsible only for payment, pursuant to the payment provision of the contract, for services rendered before the effective date or termination.
- (b) The Band or political subdivisions may, in addition to any other remedy available terminate the Contract for default if the supplies or equipment delivered are not received on the due date(s) or are defective. Upon termination, the Band may pursue any remedy it may have under federal, state or Band law, including but not limited to self-help or set off.
- (1) The Band or political subdivisions may, by written notice of default to the Contractor, terminate this contract in whole or in part, when the Contractor fails to:
 - (i) deliver the supplies or to perform the services within the time specified in the contract or any agreed upon extension;
 - (ii) make progress, so as to endanger performance of the contract (but see paragraph (2) below) and;
 - (iii) perform any of the other provisions of the contract (see paragraph (2) below).
 - (2) The Band's or political subdivision's right to terminate a contract under the provision above, may be exercised if the Contractor does not cure such failure within ten (10) business days (or more if authorized in writing by the Contracting Officer) after receipt of a notice from the Contracting Officer specifying the failure.
 - (3) If the Band or political subdivision terminates this contract in whole or in part, it may acquire under the terms and the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Band or political subdivision for any excess costs for those supplies or services. However, the Contractor shall continue the provisions of the contract not terminated.
 - (4) Except for defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor.
 - (5) If the failure to perform is caused by the default of a subcontractor and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor

shall not be liable for any excess cost for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

- (6) The Band or political subdivision shall pay the contract price for completed services performed and accepted. The Band may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Band against loss. Failure to agree on such an amount will be a dispute under the Disputes clause.
 - (7) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Band.
 - (8) The right and remedies of the Band or political subdivision in this clause are in addition to any other rights and remedies provided by the law or under the contract.
- (c) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the Administration Policy Board determines that the Contractor or its representative offered or gave a gratuity (e.g. an entertainment or gift) to an official, agent or employee of the Band, and intended by the gratuity to obtain a contract or favorable treatment under a contract.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 29.

§ 30. Warranties.

The contractor shall provide any commercial warranty normally offered to the public. The Band or political subdivisions shall not accept delivery of supplies and equipment “as is” unless the Contracting Officer has previously agreed in writing to such terms.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 30.

§ 31. Audit.

To the extent required by law, the contractor agrees that the Commissioner of Finance of the Mille Lacs Band and other Band Officials may examine those records related to the equipment or supplies purchased.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 31.

§ 32. Covenant Against Contingent Fees.

The Contractor warrants that no person or selling agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except a bona fide employee or bona fide established selling agent maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Band shall have the right to annul the contract without liability or in its discretion to deduct from the contract price, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 32.

§ 33. Notice.

Notices to either party shall be given by addressing the communications to the address set forth in this agreement or such other address as shall be later given in writing, and depositing the same in the United States mail, postage prepaid.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 33.

§ 34. Mille Lacs Band Responsibilities.

The Mille Lacs Band or political subdivisions will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These include but are not limited to source

evaluation, protest, disputes and claims. Violation of law shall be referred to the appropriate Band, state or federal officials.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 34.

§ 35. Disputes.

Any claim by the contractor shall be submitted in writing to the Band's Contracting Officer for a written decision. A claim by the Band or political subdivision against the Contractor shall be subject to a written decision by the Contracting Officer. "Claim" as used in this section, means a written decision demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of the contract terms, or other relief arising under or relating to the contract. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. It may be converted to a claim, by complying with the submission requirements of this section, if it is disputed either as to liability or amount or is not acted upon in a reasonable time. The Contracting Officer's decision shall be final unless the Contractor appeals the matter to the Administration Policy Board whose decision will be final unless the Contractor files suit. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal or action under the contract, and comply with any decision of the Contracting Officer or the Band's Administration Policy Board.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 35.

§ 36. Jurisdiction.

The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from this Title or the application thereof. Nothing in this Title shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe in any court of competent jurisdiction.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 36.

§ 37. Construction and Severability.

The provisions of this title shall be liberally construed so as to effectuate the purposes thereof. The provisions of this title shall be several and if any phrase, clause, sentence, or provision is held invalid by a court of competent jurisdiction, the validity of the remainder of this title and the applicability thereof shall not be affected thereby.

Historical and Statutory Notes

Source

Band Ordinance 17-98, § 37.

TITLE 8 - CHILDREN AND FAMILIES

<u>Chapter</u>	<u>Section</u>
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Historical and Statutory Notes

The Preamble of Band Statute 1096-MLC-28 provides: "It is enacted, a code for protecting the general health and welfare of the people of the constituent Bands of the Mille Lacs Band of Chippewa Indians. The people of our constituent Bands represent the greatest natural resource that is available for our continued existence. In order to ensure that this resource will be available now and in the future, the government for the constituent Bands must take measures to ensure the freedom, safety, care and guidance of our people. As it is from the Great Spirit that these gifts are received by our people and we, in turn, have a cultural obligation to follow our traditional customs and beliefs in the best interest of perpetuating our existence. We, therefore, do this so that non-Indians may cherish the members of our Band when they have cause to interact with us. Let them be morally bound."

Band Statute 1096-MLC-28, § 45 provides: "Section 45. Severability. If any provisions of this Chapter or the application thereof to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of this Chapter which can be given effect without the

invalid provisions or application and to this end the provisions of this Chapter are declared severable."

The title of Band Assembly Bill 06-04-01-96, enacted as Band Ordinance 01-96 (Chapter 13 of this Title), is : "A bill of Tribal Government to provide for the amendment to Band Statute 1096-MLC-28 of the Laws of the Non-Removable Mille Lacs Band of Ojibwe Indians. To supersede any provisions of 1096-MLC-28 not consistent with this amendment."

The preamble of Band Ordinance 01-96 (Chapter 13 of this Title) provides: "Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe Indians for the purpose of amending Band Statute 1096-MLC-28."

Cross References

Assault and battery, civil causes of action, *see* 24 MLBS § 251.

Persons capable of contracting, *see* 24 MLBS § 106.

CHAPTER 1

GENERAL PROVISIONS

Section

- 1. Findings and Determinations.**
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- 17. State of Minnesota: Agreement Regarding Indian Child Custody Proceedings.**

§ 1. Findings and Determinations.

- (a) The Band Assembly hereby finds that the purpose of Chapters 1 to 10 of this title is to secure for each child who may come before the Court of Central Jurisdiction such care, guidance and control preferably in his own home, as will serve his welfare and the best interests of the Bands. To preserve and strengthen the child's family ties, to

preserve and strengthen the child's cultural and ethnic identity. Additionally, to secure for any child who may be removed from his home the care, guidance and control as nearly equivalent as that which he should have been given by his parents to help him develop into a responsible, well adjusted adult and to improve any conditions or home environment which may be contributing to his delinquency. To this end, Chapters 1 to 10 of this title shall be liberally construed.

- (b) The Band Assembly hereby finds that there is no resource that is more vital to the continued existence and integrity of the Band than our children and our elders and all the people who comprise the Non-Removable Mille Lacs Band of Chippewa Indians.
- (c) The Band Assembly hereby finds that the state of Minnesota, exercising its concurrent jurisdiction over child custody proceedings through administrative and judicial bodies, has failed to recognize the essential relations of the constituent Bands and the cultural and social standards prevailing in our communities and families.
- (d) The Band Assembly hereby finds and determines that it shall be the policy of the constituent Bands to protect the best interests of all children under the jurisdiction of the Bands and to promote stability and security of the constituent Bands and the families thereof, by establishing standards for the care of our children by choosing courses of action which least restrict the child's freedom and are consistent with the safety and interests of the constituent Bands of the Mille Lacs Band of Chippewa Indians.
- (e) The Band Assembly hereby finds and determines that the purposes of Chapters 1 to 10 of this title shall be fulfilled by the creation of a special division under the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 1.

§ 2. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend, or repeal the several provisions of Chapters 1 to 10 of this title, and all rights and privileges granted or extended hereunder shall be subject to such reserved rights.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 46.

§ 3. Definitions.

For the purpose of Chapters 1 to 10 of this title the words and phrases shall have the meanings respectively ascribed to them:

- (a) **"Abandon"** means when a parent leaves a child without communication or fails to support a child and there is no indication of the parent's willingness to assume his parental role for a period exceeding two years.
- (b) **"Adult"** means any person subject to the jurisdiction of the Mille Lacs Band of Chippewa Indians who is eighteen years of age or older.
- (c) **"Court"** means the Human Resources Division of the Court of Central Jurisdiction when exercising jurisdiction under Chapters 1 to 10 of this title.
- (d) **"Court Magistrate-Judge"** means any (duly appointed, elected) judge of the Human Resources Division of the Court of Central Jurisdiction when exercising jurisdiction under Chapters 1 to 10 of this title.
- (e) **"Custodian"** means one who has physical custody of a minor and who is providing food, shelter and supervision to him.
- (f) **"Delinquent Act"** means an act, which if committed by an adult, is designated a crime under the laws of the state of Minnesota or is designated a crime under the tribal law and order code or tribal ordinance.
- (g) **"Detention"** means the placement of a minor in an appropriate physically restrictive facility.
- (h) **"Extended Family"** means a person who has reached the age of sixteen and who is the minor's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, or made part of the extended family by tribal resolution, or as defined by the law of custom of the child's tribe.
- (i) **"Guardian"** means a person other than the minor's parent who is by law responsible for that minor (but not the minor's property).
- (j) **"Guardian Ad Litem"** means an adult appointed by the Court to prosecute or defend for a minor in any proceeding to which he may be a party.
- (k) **"Human Resource Officer"** means any and all employees of the Mille Lacs Band of Chippewa Indians-Human Services Administration who are funded pursuant to any grant or contract to service any human assistance need of any person under the jurisdiction of the Band.
- (l) **"Indian Custodian"** means an adult Band member who has reached the age of

twenty-one in whom temporary physical care, custody and control has been transferred by the parent of such minor.

- (m) **"Juvenile Offender"** means a person who commits a delinquent act prior to his eighteenth birthday.
- (n) **"Least Restrictive Alternative"** means the terms in the code direct the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonable related to the Court's objectives and must be the least restrictive way of achieving that objective. For example, the reason any person is held in detention before trial is to insure that the person will not leave the area, therefore, the only restraint on that person's freedom is the restriction on his freedom of movement. No other restriction such as mail censorship or being placed in solitary confinement is related to the stated purpose of pretrial detention.
- (o) **"Minor"** means:
 - (1) A person under eighteen years of age.
 - (2) A person eighteen years of age or older concerning whom proceedings are commenced in the Court of Central Jurisdiction prior to his eighteenth birthday.
 - (3) A person eighteen years of age or older who is under the continuing jurisdiction of the Court of Central Jurisdiction.
- (p) **"Minor-in-need-of-care"** means a minor who has no parent(s), guardian or custodian available who is capable and willing to care for him, or has suffered, or is likely to certainly suffer a physical injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions. Or, has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent(s), guardian or custodian necessary for his health and well-being. Or, has been sexually abused, or has been committing delinquent acts as a result of parental pressure, guidance or approval.
- (q) **"Parent"** includes a natural or adoptive parent as defined by the Court of Central Jurisdiction, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 29.

Cross References

Criminal causes of action, *see* 24 MLBS § 1001.

§ 4. Jurisdiction of Court.

- (a) The Court of Central Jurisdiction is hereby conferred exclusive and original subject matter jurisdiction over any cause of action that may arise pursuant to Chapters 3 to 10 of this title.
- (b) The Court shall have exclusive and original jurisdiction of the following proceedings:
 - (1) A minor is alleged to be a juvenile offender, unless the Court transfers jurisdiction to an exterior court;
 - (2) A minor is alleged to be a minor-in-need-of-care;
 - (3) Termination of parental rights;
 - (4) Adoption of a minor;
 - (5) Custody of or appointment of a custodian, conservator or a guardian for a minor;
 - (6) A mentally retarded or mentally ill minor Child custody proceedings, as defined by the Indian Child Welfare Act, (25 U.S.C.A. § 1901 et seq.) if the minor is domiciled or resides on territories under the jurisdiction of the Band and
 - (7) Transfer of jurisdiction from any court of child custody proceedings, as defined by the Indian Child Welfare Act, if the minor is not domiciled or does not reside on territories under the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 2, 3.

§ 5. Transfer of Jurisdiction.

- (a) In any child custody transfer from any court, the Band has exclusive jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act, (25 U.S.C.A. § 1901 et seq.) If the minor is domiciled or resides on lands under the jurisdiction of the Band.

- (b) The Band may petition for transfer from any court of jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act, if the minor is domiciled or resides exterior to lands under the jurisdiction of the Band.
- (c) Upon receipt of transfer jurisdiction from any court, the Solicitor General shall file a minor-in-need-of-care petition and an adjudicatory hearing shall be held in accordance with this title.
- (d) The Band agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Commissioner of Human Services.
- (e) The Band petition for transfer shall be filed by the Solicitor General or selected representative within five days of receipt of notice from a state court.
- (f)
 - (1) The Band may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act at any point in the proceedings.
 - (2) The Solicitor General or selected representative shall file a motion to intervene within five days of receipt of notice from a state court.
- (g)
 - (1) If a parent or Indian custodian petition to state court for transfer of jurisdiction is granted, the Court shall not refuse to accept such transfer.
 - (2) The Court shall accept all state court transfers of child custody proceedings.
- (h) If the Band's petition for transfer is granted or if a parent or Indian custodian's petition for transfer is granted, the Band shall expeditiously transfer the minor to the jurisdiction of the Band.
- (i) Upon receipt of transfer jurisdiction from state court, the Solicitor General shall file a minor-in-need-of-care petition and an adjudicatory hearing shall be held in accordance with this title.
- (j) The Court shall give full faith and credit to other tribes' child custody court orders, as defined by the Indian Child Welfare Act.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 2.04, 3.01-3.06.

§ 6. Court Participation in Programs; Grants-In-Aid.

The Court is authorized to cooperate fully with any federal, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purpose of Chapters 1 to 10 of this title, subject to appropriation of all funds by the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 2.01.

§ 7. Social Services.

The Court shall utilize such social services as may be furnished by any tribal or federal agency, provided that they are economically administered without unnecessary duplication and expense.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 2.02.

§ 8. Contracts for Care and Placement of Minors.

The Court may negotiate a contract, on behalf of the Band with tribal or federal agencies and departments for the care and placement of minors whose status is adjudicated under this Court, subject to ratification by the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 2.03.

§ 9. Guardian Ad Litem.

- (a) The Court, at any stage of a proceeding, may appoint a Guardian Ad Litem for a minor who is a party, if the minor has no parent, guardian or custodian appearing on behalf of the minor or if their interests conflict with those of a minor.
- (b) The Court, under any proceeding authorized by Chapters 1 to 10 of this title, shall appoint for the purposes of that proceeding a Guardian Ad Litem for a minor where the Court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.

- (c) The duties of the Guardian Ad Litem shall be to represent the minor's interest in any proceeding as required by the Court and make recommendations to the Court on disposition.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 4.04, 32.

§ 10. Court to Inform Minor or Parents.

At his first appearance before the Court, the minor, who is alleged to be a juvenile offender, the parent(s), guardian or custodian, when a minor is alleged to be a minor-in- need-of-care, and the parent(s), in a termination of parental rights proceeding, shall be informed by the Court of:

- (a) The allegations against him;
- (b) The right to an attorney at his own expense;
- (c) The right to testify or remain silent and that any statement made by him may be used against him;
- (d) The right to cross-examine witnesses;
- (e) The right to subpoena witnesses on his own behalf; and
- (f) The possible consequences if the allegations of the petition are found to be true.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 4.05.

Cross References

Admission of juvenile offender allegations, *see* 8 MLBS § 135.

Basic rights of children taken into custody, *see* 8 MLBS § 105.

Due process of law, *see* 1 MLBS § 8.

Minor-in-need-of-care proceedings, parent, guardian or custodian informed of right to attorney, *see* 8 MLBS § 210.

Right to confront witnesses, obtain witnesses and have assistance of counsel, *see* 1 MLBS § 6.

§ 11. Evidentiary Standards.

In all cases before the Human Resource Division, the judge/justice shall utilize a clear and convincing standard of proof.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 34.

§ 12. Adjudication Upon Child Status Not Conviction of Crime.

No adjudication upon the status of any child in the jurisdiction of the Court shall be deemed criminal or a conviction of a crime.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 2.05.

§ 13. Disposition or Evidence Not Admissible in Other Proceedings.

The disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 2.06.

§ 14. Standard for Shelter Care and Detention Facilities.

(a)

- (1) The Chief Justice of the Court of Central Jurisdiction shall prescribe and enforce rules and regulations governing the operation of detention and shelter care facilities. He may assign the responsibilities to another qualified tribal agency.
- (2) The rules and regulations shall include, but are not limited to the following:
 - (i) Cleanliness standards,
 - (ii) Heat, water and light standards,
 - (iii) Personnel standards,
 - (iv) Visitation privileges,

- (v) Occupancy standards,
 - (vi) Provisions for medical and dental care and
 - (vii) Provisions for food, furnishing, clothing and toilet articles.
- (b) The Chief Justice of the Court of Central Jurisdiction shall prescribe and enforce written policies and procedures governing the administration of detention and shelter care facilities. Such policies and procedures shall include, but are not limited to the following:
- (1) A minor shall not be punished, ridiculed or criticized for expressing through speech, custom or dress, the minor's Indian and tribal heritage.
 - (2) A minor shall be allowed to wear his hair according to his personal taste. The minor shall not be punished, ridiculed or criticized for the hairstyle he selects.
 - (3) A minor may wear his own clothes rather than clothes supplied by the detention facility, as long as they comply with minimum standards of cleanliness.
 - (4) Incoming and outgoing mail may be inspected for contraband, but shall not be read.
 - (5) Whenever possible, the minor shall be allowed to attend the school in which he is enrolled. School work and educational assistance, at the minor's level of development, shall be provided for the minor in detention facilities.
 - (6) A minor shall be allowed to attend traditional ceremonials provided that he is accompanied by a parent, guardian or custodian, has received consent to do so by the child's Court Counselor, parent or custodian, who has been delegated the authority to consent from the judge/justice of the Court of Central Jurisdiction and returns immediately to the detention or shelter care facility
 - (7) A minor shall be allowed to attend the funeral and any related activities of his brother, sister, mother, father, aunt, uncle, grandmother grandfather or cousin, whether they be natural or adopted provided that:
 - (i) His parent, guardian or custodian request and receive permission from the judge/justice of the Human Resource Division and
 - (ii) He is accompanied by a parent, guardian or custodian and
 - (iii) He return immediately to the shelter care or detention facility.

- (8) A minor shall be given the opportunity to engage in physical exercise every day.
 - (9) A minor shall not be locked alone in a room unless there exists a reasonable belief that he may cause physical injury to himself or others if not locked alone. An emergency fire exit must be accessible and toilet facilities must be available to the minor. While a minor is locked alone in a room, he must be visited at least once an hour. The confinement shall not exceed a four-hour time period.
 - (10) A minor shall not be punished by physical force, solitary confinement or deprivation of meals or family visits.
 - (11) A minor in a detention facility shall not be required to perform work duties, excepting household chores.
- (c) A judge/justice shall have the authority to close any facility in violation of this section.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 33.

Cross References

Duties of chief Justice, *see* 5 MLBS § 114.

§ 15. Legal Duties of Human Resource Officers and Child Social Workers.

- (a) The Human Resource Officer and Child Social Workers shall carry out duties conferred throughout Chapters 1 to 10 of this title. The Human Resource Officer and Child Social Workers duties do not include acting on behalf of the Band against the child. Their sole responsibility is to serve as a friend of the child, on the child's behalf and in the child's best interest.
- (b) The duties and responsibilities of the Human Resources Officer and Child Social Worker of the Band shall include, but not be limited to, the following:
 - (1) Make investigations as provided in this title, or as directed by the Court;
 - (2) Make reports to the Court as provided in this title or as directed by the Court;
 - (3) Conduct informal hearings with the minor and the minor's parent(s), guardian or custodian;

- (4) Place a minor in detention or shelter care as provided in this title; and
 - (5) Perform such other duties in connection with the care, custody or transportation of minors as the Court may require.
- (c) The Human Resource Officer must have an educational background and/or prior experience in the field of delivering social services to youth.
 - (d) The Human Resource Officer shall identify and develop resources on the reservation designed to enhance each minor's potential as a viable member of the Band community.
 - (e) The Human Resource Officer shall not be employed at or perform the duties of a prosecutor, Solicitor General or law enforcement official.
 - (f) The Human Resource Officer shall not testify against any minor in any proceeding under this title or any adjudicatory proceeding.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 30.

§ 16. Obligations of Solicitor General.

- (a) The Solicitor General shall represent the people of the constituent Band of the Mille Lacs Band of Chippewa Indians under Chapters 1 and 3 to 10 of this title.
- (b) The Solicitor General's duties shall include, but not be limited to:
 - (1) Filing petitions with the Court as provided in Chapters 1 and 3 to 10 of this title;
 - (2) Representing the Band in all proceedings under Chapters 1 and 3 to 10 of this title; and
 - (3) Performing such other duties as the Court may order.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 31.

Cross References

Duties of Solicitor General, *see* 4 MLBS § 18.

§ 17. State of Minnesota: Agreement Regarding Indian Child Custody Proceedings.

The Band Assembly hereby authorized the Chief Executive to officially notify the state of Minnesota-Commissioner of Department of Human Services of the intention of the Mille Lacs Band of Chippewa Indians to revoke the agreement regarding Indian Child Custody Proceedings with cause following a minimum of thirty days after delivery of said written notice to the Commissioner of Human Services. The revocation shall not affect any action or proceeding over which a state court has previously assumed jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 36.

CHAPTER 2

CURFEW

Section

71. Purpose and Findings.

72. Definitions.

73. Prohibited Acts.

74. Exceptions.

75. Prosecution.

76. Affirmative Defenses.

77. Reasonable Grounds.

78. Penalties.

79. Sovereign Immunity.

Historical and Statutory Notes

The Preamble to and §§ 101.1 and 109 of Band Ordinance 31-03 (this Chapter) provide: “Preamble: This Ordinance shall regulate the conduct of juveniles in Public Places during night time hours for the purposes of protecting Juveniles from criminal activities, preventing Juveniles from committing crimes, enhancing parental control of their Juvenile children and protecting the peace and well-being of the community.”

“Section 101. Purposes and Findings: 1. This Ordinance repeals and replaces Title 8 MLBS §§ 71 and 72 and 24 MLBS § 1261.” “Section 109. Severability. If the Court of Central Jurisdiction adjudges any provisions of this ordinance to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in the judgment.”

§ 71. Purposes and Findings.

- (a) The Mille Lacs Band of Ojibwe Indians finds that there has been an increase in

violence and crime by and against Juveniles on Band Lands in recent years.

- (b) The lack of maturity and experience makes Juveniles more susceptible to becoming victims or perpetrators of crimes.
- (c) The Mille Lacs Band finds that the increase in criminal activity by and against Juveniles creates a need for an Ordinance that will address the causes of the problem and aid in the prevention of crime.

Historical and Statutory Notes

Source:

Band Ordinance 31-03, § 101.2-4.

§ 72. Definitions.

- (a) **Authorized Adult.** An Authorized Adult is any person who is at least eighteen (18) years of age and authorized by a Parent to have custody and control of a Juvenile.
- (b) **Band Lands.** Band Lands means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.
- (c) **Emergency.** Emergency means an unforeseen circumstance that call for immediate action. The term includes, but is not limited to, a fire, natural disaster, automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (d) **Juvenile.** Juvenile means a person under the age of eighteen (18) years but does not include a person under eighteen (18) years of age who is married or has been legally emancipated.
- (e) **Knowingly.** Knowingly means an action or inaction that is taken with such knowledge as a Parent or Authorized Adult is reasonably expected to have concerning the whereabouts of the Juvenile in his or her care, or such knowledge as a Person Operating a place of business is reasonably expected to have concerning the persons on the premises of such business.
- (f) **Parent.** Parent means any person having legal custody of a Juvenile: (1) as a natural parent, adoptive parent or step-parent; (2) as a legal guardian; or, (3) pursuant to a court order.
- (g) **Public Place.** A public place means any public or private location or area open to the public and includes, but is not limited to, streets, highways, roads, parks, public recreation areas, entertainment or civic facilities, schools, and the common areas of

hospitals, clinics, apartment houses, office buildings, garages and shops.

- (h) **Serious Bodily Harm.** Serious Bodily Injury means bodily injury that creates a substantial risk of death or that causes death or serious or permanent disfigurement, loss or protracted impairment of the function of any bodily member or organ.
- (i) **Person Operating.** Person Operating means any individual, corporation, association, partnership, or other business entity managing a place of business on Band Lands that is open to the public.

Historical and Statutory Notes

Source:

Band Ordinance 31-03, § 102

§ 73. Prohibited Acts.

- (a) In accordance with the cultural law of the Mille Lacs Band of Ojibwe Indians, all children under the chronological age of ten (10) who are subject to the jurisdiction of the Mille Lacs Band shall be subject to curfew that shall commence at the time the sun is fully set in the western sky. Except as provided in § 74 of this Chapter, it is unlawful for such a child to be present in any Public Place on Band Lands without a Parent or Authorized Adult from sunset to sunrise.
- (b) Except as provided in § 74 of this Chapter, it is unlawful for a Juvenile who is subject to the jurisdiction of the Mille Lacs Band to be present in any Public Place on Band Lands without a Parent or Authorized Adult:
 - (1) between 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday and 5:00 a.m. of the following day; or
 - (2) between 11:00 p.m. on any Friday or Saturday and 5:00 a.m. of the following day.
- (c) Any Parent or Authorized Adult subject to the jurisdiction of the Mille Lacs Band who knowingly or through negligent supervision permits a Juvenile to be present at any Public Place in violation of paragraphs (a) or (b) of this section shall be guilty of a civil misdemeanor.
- (d) Any Person Operating or otherwise in charge of any Band-owned business to knowingly permits any Juvenile to be present at any Public Place maintained by such business in violation of paragraphs (a) or (b) of this section shall be guilty of a civil misdemeanor.

Historical and Statutory Notes

Source:

Band Ordinance 31-03, § 103.

§ 74. Exceptions.

It shall not be unlawful under § 73 of this Chapter for a Juvenile to be present at a Public Place at any time if:

- (a) the Juvenile is accompanied by a Parent or Authorized Adult;
- (b) the Juvenile is involved in, or attempting to remedy, alleviate or respond to, an Emergency;
- (c) the Juvenile is engaged in lawful employment or while traveling to and from such employment;
- (d) the Juvenile is attending an activity that is sponsored by a school or religious organization, a traditional ceremony, or other social or recreational activity supervised by adults, or is reasonably traveling to and from such activity; or
- (e) the Juvenile, with the authority of a Parent, is on the public right-of-way, boulevard or sidewalk abutting the Juvenile's residence.

Historical and Statutory Notes

Source:

Band Ordinance 31-03, § 104.

§ 75. Prosecution.

- (a) A prosecution for a violation of § 73 of this Chapter may only be initiated by the Solicitor General's Office. To initiate such a prosecution, the Solicitor General's Office must file a complaint in the Court of Central Jurisdiction within ninety days of the date on which the violation occurred. The complaint shall contain:
 - (1) a citation to the specific provision(s) of this Chapter allegedly violated; and
 - (2) the name, age and address, if known, of the defendant and, if the defendant is a Juvenile, of his or her parents, if known; and
 - (3) a plain and concise statement of the facts upon which the allegations are based.

- (b) The complaint must be personally served on the defendant within seven (7) days after it is filed in the Court of Central Jurisdiction. If the defendant is out of the jurisdiction of the Mille Lacs Band of Ojibwe Indians or is otherwise unable to be personally served, the seven (7) day period shall begin after the defendant has been located within the jurisdiction of the Mille Lacs Band.
- (c) **Preliminary Inquiry.**
 - (1) A preliminary inquiry shall be held within thirty (30) days after the complaint has been filed and the defendant has been properly served, unless the Court finds good cause to the contrary. In no event shall a preliminary inquiry take place later than forty-five (45) days after the complaint has been filed and the defendant has been properly served.
 - (2) The defendant shall enter a plea of guilty or not guilty at the preliminary inquiry. If the defendant stands mute or refuses to enter a plea, then the Court shall enter a plea of not guilty for the defendant.
- (d) **Pretrial Hearing and Adjudicatory Hearing.** The Court shall schedule a pretrial hearing to be held within fifteen (15) days after the preliminary hearing, and an adjudicatory hearing to be held within forty-five (45) days after the preliminary hearing. The time for the pretrial hearing and adjudicatory hearing may be extended if the defendant agrees to waive the time limits.
- (e) **Confidentiality of Records.** All court records under this Chapter shall be confidential and shall not be open to the public for inspection. Any conviction of a Juvenile under this Chapter shall become sealed once the Juvenile reaches eighteen (18) years of age.
- (f) **Appeal.** Appeals shall be conducted according to 24 MLBSA § 2501 et seq. A party may appeal a final Order by filing with the Clerk of the Court a written Notice of Appeal within thirty (30) days of the date the Order was filed.

Historical and Statutory Notes

Source:

Band Ordinance 31-03, § 105.

§ 76. Affirmative Defenses.

It shall be an affirmative defense to prosecution under § 73(d) of this Chapter that:

- (a) the owner, manager or employee of any business or other enterprise open to the public promptly notified the Mille Lacs Band police department that a Juvenile was present on the premises in violation of § 73(a) or (b) and refused to leave when requested; or

- (b) the owner, manager or employee reasonably relied upon the Juvenile's representation as to proof of age. Proof of age may be established by Band identification, State driver's license, school identification card, or other verifiable means.

Historical and Statutory Notes

Source:

Band Ordinance 31-03, § 106.

§ 77. Reasonable Grounds.

A police officer may make an arrest or issue a citation under this Chapter if the officer has reasonable grounds to believe that a violation of this Chapter has occurred and no exception applies.

Historical and Statutory Notes

Source:

Band Ordinance 31-03, § 107.

§ 78. Penalties.

- (a) Except as otherwise provided in this Chapter, violations of § 73(a)-(c) will be prosecuted pursuant to 8 MLBS Chapter 3 and will be subject to the penalties therein. In addition, the Court shall also sentence the Juvenile and/or the Juvenile's Parent(s) or Authorized Adult(s) as follows:
 - (1) The first offense shall be punishable by a fine of \$25.00.
 - (2) The second offense shall be punishable by a fine of \$50.00.
 - (3) The third and any additional offenses shall be punishable by a fine of \$75.00. In addition, the Court shall require the Mille Lacs Band's Family Services Department to investigate the Juvenile's social and education background for the purposes of making a recommendation to the Office of Solicitor General as to whether a Petition for a Child in Need of Protective Services (CHIPS) is required.
- (b) Nothing in this section shall preclude the Court from alternative sentencing if deemed in the best interest of the Juvenile.
- (c) If a Juvenile cannot pay the fine imposed by the Court under this section, the Juvenile's Parent(s) or Authorized Adult(s) shall pay the fine.

- (d) A violation of § 73(d) shall be a civil misdemeanor and punishable by a fine not to exceed \$100.00 and/or other alternative sentencing, as deemed necessary by the Court.

Historical and Statutory Notes

Source:

Band Ordinance 31-03, § 108.

§ 79. Sovereign Immunity.

Nothing contained in this Chapter shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

CHAPTER 3

JUVENILE OFFENDERS

Section

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- 148. **Appeal.**
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Cross References

Compulsory attendance of school age pupils, *see* 9 MLBS § 19.
 Contributing to delinquency of minor, *see* 24 MLBS § 1260.
 Criminal procedure, juvenile delinquency, *see* 24 MLBS § 4301.
 Liquor violations, *see* 24 MLBS § 1258.
 Prohibited drugs, consumption by minors, *see* 23 MLBS § 5.

§ 101. Juvenile Offender Complaint.

A complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:

- (a) A citation to the specific statutory provisions of this title which give the Court jurisdiction of the proceedings,
- (b) A citation to the Mille Lacs Band Statutes Annotated provision or custom and tradition which the minor is alleged to have violated, Name, age and address of the minor who is the subject of the complaint,
- (c) The name and address of parents, custodian or guardian, if known and

- (d) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 6.

Cross References

Minor-in-need-of-care complaint, *see* 8 MLBS § 201.

§ 102. Warrants.

- (a) The Court may issue a warrant directing that a minor be taken into custody if the Court finds probable cause to believe the minor has committed the acts alleged in the complaint, and there is probable cause to believe that the child will not appear for a hearing, or is in immediate and serious emotional or physical harm or would commit additional criminal offenses.
- (b) The Court may issue a warrant authorizing a law enforcement officer to search for a minor if there is probable cause to believe that the minor is within the Court's jurisdiction and a custodial warrant has been issued for the alleged juvenile offender.
- (c) The Court may issue a warrant authorizing a law enforcement officer to search for and seize property when the property has been obtained or is possessed in a manner which constitutes a delinquent act; or is designed or intended for use, or which is, or has been used as a means of committing a delinquent act; or would be material evidence in a juvenile offender proceeding.
- (d) The Court may issue a warrant for a person's arrest immediately upon the failure to appear, either in person or by counsel, in Court as directed for contempt of court.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 7.

Cross References

Criminal procedure. Warrant, summons and arrest, *see* 24 MLBS § 4101.
Unreasonable searches and seizures, *see* 1 MLBS § 2.

§ 103. Custody.

A minor may be taken into custody by a law enforcement officer if:

- (a) The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
- (b) The minor is found in surroundings or conditions which pose an immediate and serious threat of emotional or physical harm; or
- (c) A Warrant pursuant to 8 MLBS § 102 has been issued for the minor.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 8.

Cross References

Criminal procedure, Warrant, summons and arrest, *see* 24 MLBS § 4101.

§ 104. Law Enforcement Officer's Duties.

A law enforcement officer who takes a minor into custody pursuant to 8 MLBS § 103 shall proceed as follows.

- (a) An arresting officer shall give the warnings listed in 8 MLBS § 105 to any minor he takes into custody prior to any questioning.
- (b) An arresting officer shall release the minor to the minor's parent, guardian or custodian, and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary.
- (c) If the minor is not released, an arresting officer shall make immediate and recurring efforts to notify the minor's parent, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the Human Resource Officer pursuant to 8 MLBS § 109. If the minor is not released, the minor shall be taken immediately to the Human Resource Officer by the arresting officer.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 9.

Cross References

Criminal procedure, Warrant, summons and arrest, *see* 24 MLBS § 4101.

§ 105. Basic Rights of Children Taken into Custody.

At the time a minor is taken into custody as a juvenile offender, the arresting officer shall give the following warning:

The minor has a right to remain silent. Anything the minor says can be used against the minor in court as he is presumed to be guilty until he can prove his innocence. The minor has a right to the presence of an attorney, parents or person of his choice during questioning. If he cannot afford an attorney, the Court is not required to provide free legal service, the Court will assist the minor in obtaining the services of any attorney through available services and parents of the minor cannot waive these rights for the minor.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 4.

Cross References

Assistance of counsel, *see* 1 MLBS § 6.

Court to inform minor of rights, *see* 8 MLBS § 11.

Due process of law, *see* 1 MLBS § 8.

Self-incrimination in criminal proceeding, *see* 1 MLBS § 4.

§ 106. Fingerprints and Photographs.

- (a) An alleged juvenile offender shall not be fingerprinted or photographed without the consent of the Court.
- (b) If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a minor in custody, he may fingerprint the minor for the purpose of immediate comparison with the latent fingerprints, only with the consent of the Court. Copies of the fingerprints shall be immediately destroyed, if the comparison is negative, or if the minor is not referred to the Court.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 4.02, 25.

§ 107. Questioning in Custody.

A minor alleged to be a juvenile offender who is taken into custody and placed in detention or shelter care shall not be questioned except to determine identity.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 4.01.

§ 108. Lineup for Identification.

The Court may authorize a lineup that includes a minor in custody as an alleged juvenile offender for identification purposes only if the minor and the minor's parent, guardian or custodian give their written consent and the minor is represented by Counsel at the time of the lineup.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 24.

§ 109. Court Counselor's Duties.

- (a) The Court Counselor shall not place a minor in detention unless a complaint is filed in accordance with 8 MLBS § 101 or the court orders that a minor be taken into custody pursuant to 8 MLBS § 102.
- (b) If the minor's parent, guardian or custodian has not been contacted, the Court Counselor shall make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent, guardian or custodian, unless detention or shelter care is immediately necessary.
- (c) If a minor is not released to his parent, guardian or custodian, the Court Counselor shall place the minor in detention or shelter care, pending the preliminary inquiry.
- (d) If a minor is not released to his parent, guardian or custodian, the Court Counselor shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendation for temporary care and custody for presentation at the preliminary inquiry.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 10.

§ 110. Detention Pending Hearing.

A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

- (a) A foster care facility on the reservation licensed or approved by the Band;
- (b) A detention home on the reservation approved by the Band; or
- (c) A private family home on the reservation approved by the Band.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28 § 11.

Cross References

Minors-in-need-of-care, shelter care, *see* 8 MLBS § 206.

Standard for shelter care and detention facilities, *see* 8 MLBS § 15.

§ 111. Detention in Jail.

A minor who is sixteen years of age or older may be detained in a county jail or facility used for the detention of adults only if:

- (a) A facility in 8 MLBS § 110 is not available or would not assure adequate supervision of the minor;
- (b) Detention is in a cell separate, but not removed, from sight and sound of adults, whenever possible;
- (c) Adequate supervision is provided twenty-four hours a day.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 11.01.

§ 112. Preliminary Inquiry-Minor Placed in Detention or Shelter Care.

- (a) If a minor is placed in detention or shelter care by the Human Resource Officer pursuant to 8 MLBS § 109(c), the Court shall conduct a preliminary inquiry within twenty-four hours for the purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act and whether continued detention or shelter care is necessary, pending further proceedings.

- (b) The minor must be released to parent, guardian, custodian or other suitable person, unless there is reason to believe that the child would endanger himself or others; not return for a court hearing; not remain in care or control of the person the child is to be released to; or that the child's health or welfare would be endangered.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 12.

§ 113. Preliminary Inquiry-Minor Not in Detention or Shelter Care.

If a minor has been released to his parent, guardian or custodian, the Court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 12.01.

§ 114. Notice of Preliminary Inquiry.

- (a) Notice of the preliminary inquiry shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the inquiry has been established. The notice shall contain:
 - (1) The name of the court;
 - (2) The title of the proceedings;
 - (3) A brief statement of the substance of the allegations against the minor; and
 - (4) The date, time and place of the preliminary inquiry.
- (b) The notice shall be delivered by a law enforcement officer, or an appointee of the Court.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 12.03.

§ 115. Presence of Parent, Guardian or Custodian at Preliminary Inquiry.

If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Court shall recess for not more than twenty-four hours and direct the Human Resource Officer to make continued efforts to obtain the presence of a parent, guardian or custodian.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §12.02.

§ 116. Probable Cause.

The circumstances that give rise to the complaint or the taking of the minor into custody and the need for detention or shelter care. If the Court finds that probable cause exists to believe the minor performed the delinquent act, the minor may be released to his parents and ordered to appear at the adjudicatory hearing.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 12.04.

§ 117. Release to Responsible Adult.

If the act is serious enough to Warrant continued detention or shelter care and there is reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings or there is reasonable cause to believe that the minor will commit a serious act causing damage to person or property, the Court may release the minor to a relative or other responsible adult tribal member, if the parent, guardian or custodian of the minor consents to the release. If the minor is ten years of age or older, the minor and his parent, guardian or custodian must both consent to the release.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 12.05.

§ 118. Continued Detention or Shelter Care.

Upon a finding that probable cause exists to believe that the minor committed the alleged

delinquent act and that there is a need for detention or shelter care and the minor's detention or shelter care shall be continued, the Court shall consider the Court Counselor's recommendation prepared pursuant to 8 MLBS § 109(d).

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 118.

§ 119. Dismissal of Complaint.

If probable cause exists to believe the minor committed the alleged delinquent act and the need for detention or shelter care is not found, the complaint shall be dismissed with or without prejudice and the minor released.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 12.061.

§ 120. Investigation by Human Resource Officer.

- (a) The Human Resource Officer shall make an investigation within twenty-four hours of the preliminary inquiry or the release of the minor to determine whether the interests of the minor and the Band require that further action be taken.
- (b) Upon the basis of his investigation, the Human Resource Officer may recommend that no further action be taken. Suggest to the minor, his parent, guardian or custodian that they appear for an informal hearing pursuant to 8 MLBS § 121; a petition be filed; or a transfer petition be filed.
- (c) The Human Resource Officer may recommend that the Solicitor General file a petition pursuant to 8 MLBS § 127 in the Court to initiate further proceedings. The petition shall be filed within forty-eight hours if the minor is in detention or shelter care. If the minor has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within five days.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 13.

§ 121. Informal Hearing.

The Human Resource Officer may hold an informal conference with the minor and the minor's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

- (a) The admitted facts bring the case within the jurisdiction of the Court;
- (b) An informal adjustment of the matter would be in the best interest of the minor and the Band; and
- (c) The minor and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 14.

§ 122. Notice of Informal Hearing.

- (a) Notice of the informal hearing shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established.
- (b) The notice shall contain:
 - (1) The name of the Court;
 - (2) The title of the proceeding; a brief statement of the substance of the allegation against the minor; and
 - (3) The date, time and place of the informal hearing.
- (c) The notice shall be delivered by a law enforcement officer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28§ 14.01.

§ 123. Subpoenas.

The provisions of 8 MLBS §§ 121-126 do not authorize the Human Resource Officer to compel any person to appear at any conference, produce any papers or visit any place.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 14.03.

§ 124. Inadmissibility of Statements.

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the minor under this chapter.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 14.02.

§ 125. Informal Adjustment.

- (a) At the informal hearing, the Human Resource Officer may:
 - (1) Refer the minor and the parent, guardian or custodian to the community agency for needed assistance.
 - (2) Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform.
 - (3) Accept an offer of restitution, if voluntarily made by the minor.
 - (4) Recommend that the Solicitor General file a petition pursuant to 8 MLBS § 127.
- (b) Any informal adjustment period shall not exceed six months.
- (c) The Human Resource Officer shall set forth in writing the agreements and conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 14.04-14.06.

§ 126. Progress Reviews.

The Human Resource Officer shall review the minor's progress every thirty days. If, at any time after the initial thirty-day period, the Human Resource Officer concludes that positive results are not being achieved, the Human Resource Officer shall recommend that the Solicitor General file a petition pursuant to 8 MLBSA § 127.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 14.07.

§ 127. Petition.

- (a) Proceedings under this chapter shall be instituted by a petition filed by the Solicitor General on behalf of the Band and in the interests of the minor. The Solicitor General shall file no petition with the Court unless the Commissioner of Human Services shall certify to the facts contained therein. No Human Resource Officer shall certify to any facts contained therein on any petition, however this shall not relieve any Human Resource Officer from civil liability for malfeasance in the performance of their official duties.
- (b) The petition shall state:
 - (1) The name, birthdate and residence of the minor.
 - (2) The names and residences of the minor's parent, guardian or custodian.
 - (3) A citation to the specific statutory provision of this title which gives the Court jurisdiction of the proceedings.
 - (4) A citation to the Mille Lacs Band Statutes Annotated provision which the minor is alleged to have violated.
 - (5) If the minor is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 15.

§ 128. Date of Adjudicatory Hearing.

- (a) Upon receipt of the petition, the Court Clerk shall set a date for the hearing which

shall not be more than five days after the Court received the petition from the Solicitor General. Mediation required pursuant to statute shall be waived, if the adjudicatory hearing is not held within ten days after the filing of the petition.

- (b) Trial upon the merits shall commence within thirty days of filing of the complaint or be dismissed with or without prejudice.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 13, 16.

§ 129. Continuance.

- (a) If the hearing is continued upon motion of the minor, the petition shall be dismissed and cannot be filed again.
- (b) The hearing is continued upon motion of the Solicitor General by reason of the unavailability of material evidence or witnesses and the Court finds the Solicitor General has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 16.01.

§ 130. Summons.

- (a) At least five days prior to the adjudicatory hearing, the Court shall issue summons to:
 - (1) The minor;
 - (2) The minor's parent, guardian or custodian;
 - (3) Any person the Court believes necessary for the proper adjudication of the hearing; and
 - (4) Any person the parties believe necessary for the proper adjudication of the hearing.
- (b) The summons shall contain:
 - (1) The name of the Court;

- (2) The title of the proceedings; and
- (3) The date, time and place of the hearing.
- (c) A copy of the petition shall be attached to the summons.
- (d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail.
- (e) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court and a bench Warrant shall be issued.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 16.04.

§ 131. Adjudicatory Hearing.

An adjudicatory hearing shall be conducted within ten days of receipt of the petition by the Court. The adjudicatory hearing shall be held for the sole purpose of determining the guilt or innocence of a juvenile offender or for determining if the minor is a minor-in- need-of-care.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 17.

§ 132. Testimony at Adjudicatory Hearing.

- (a) The Court shall hear testimony concerning the circumstances which gave rise to the complaint.
- (b) No evidence that would be inadmissible in a civil proceeding shall be admitted.
- (c) The parties shall have the right to cross-examine and present witnesses.
- (d) Human Resource Officers shall testify at any Court hearing to which they have factual knowledge of the circumstances surrounding the cause of action.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 15, 17.01 to 17.03.

§ 133. Burden of Proof; Finding.

If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 17.04.

§ 134. Appealability of Finding.

A finding that a minor is a juvenile offender constitutes a final order for purpose of appeal.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 16.02.

§ 135. Admission of Allegations.

If the minor admits the allegations of the petition, the Court shall proceed to the dispositional stage only if the Court finds:

- (a) The minor fully understands his rights as set forth in 8 MLBS § 11 and fully understands the potential consequences of his admission.
- (b) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for Court action.
- (c) The minor has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 16.03.

§ 136. Pre-Dispositional Report.

- (a) The Human Resource Officer shall prepare and present a written report to the Court at least one day before a dispositional hearing.
 - (1) The report shall contain a place for the care and assistance to the minor or his

parents, guardian or custodian which is calculated to resolve the problems presented in the petition.

- (2) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.
 - (3) Preference shall be given to the dispositional alternatives which are listed in 8 MLBS § 141 and select that which is the *least restrictive* of the minor's freedom and is consistent with the interests of the Band.
 - (4) The report shall contain specific reasons for not recommending placement of the minor with his parent, guardian or custodian.
- (b) The Human Resource Officer shall present the pre-dispositional report to the Court, the person selected by the minor to represent him and the Solicitor General at least one day before the dispositional hearing.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 18.

§ 137. Medical Examination.

- (a) The Court may order a medical examination for a minor who is alleged to be a juvenile offender.
- (b) The Court may order a mental and/or physical examination at any time subsequent to the time that the party who is the subject of the cause admits the allegations of the petition, or if he does not admit, at any time subsequent to the time the Court finds the allegations of the petition have been proved.
- (c) The report of a medical examination shall not be admissible in evidence, nor shall it be considered by the Court, at the adjudicatory hearing in any juvenile Court case. It shall be admissible in evidence at the dispositional hearing in any juvenile Court case.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 23

§ 138. Dispositional Hearing.

A dispositional hearing shall take place no more than ten days after the adjudicatory hearing.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28 § 19.

§ 139. Notice of Dispositional Hearing.

- (a) Notice of the dispositional hearing shall be given to the minor and his parent, guardian or custodian and their counsel at least forty-eight hours before the hearing.
- (b) A dispositional hearing notice shall contain:
 - (1) The name of the Court;
 - (2) The title of the proceedings;
 - (3) A statement that the hearing is to determine the disposition of the case; and
 - (4) The date, time and place of the dispositional hearing.
- (c) The notice shall be delivered by a law enforcement officer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 19.02-19.04.

§ 140. Evidence.

- (a) At the dispositional hearing, the Court shall hear evidence on the question of proper disposition.
- (b) At the dispositional hearing, the Court shall review and consider the predisposition report submitted by the Human Resource Officer and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The Court shall also consider the alternative predisposition report prepared by the minor and his attorney, if any.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 19.01, 19.05.

§ 141. Dispositional Orders.

- (a) If a minor has been adjudged a juvenile offender, the Court may make the following dispositions:
 - (1) Place the minor on probation subject to conditions set by the Court;
 - (2) Place the minor in an institution or agency designated by the Court.
- (b) The dispositional orders are to be in effect for the time limit set by the Court, but no order shall continue after the minor reaches the age of eighteen years of age.
- (c) The dispositional orders are to be reviewed at the Court's discretion, but at least once every six months.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 19.07.

§ 142. Appealability of Dispositional Order.

The dispositional order constitutes a final order for purposes of appeal.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 19.06.

§ 143. Modification of Dispositional Order.

- (a) A dispositional order of the Court may be modified upon a showing of change of circumstances.
- (b) The Court may modify a dispositional order at any time upon the motion of the following:
 - (1) The minor,

- (2) The minor's parent, guardian or custodian and
 - (3) The Court Counselor.
- (c) If the modification involves a change of custody the Court shall conduct a hearing pursuant to subsection (d) to review its dispositional order.
- (d) A hearing to review a dispositional order shall be conducted as follows:
- (1) Notice in writing or the hearing shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least forty-eight hours before the hearing. The Notice shall contain the name of the Court, the title of the proceedings, a statement that the hearing is to review the disposition and the date, time and place of the hearing. The notice shall be delivered by a tribal law enforcement officer or an appointee of the Court.
 - (2) The Court shall review the performance of the minor, the minor's parents, guardian and custodian and the Human Resource Officer and other persons providing assistance to the minor and the minor's family.
 - (3) In determining modification of disposition, the procedures prescribed in 8 MLBS §§ 136 and 138-143 shall apply.
 - (4) If the request for review of disposition is based upon an alleged violation of a Court order, the Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 19.08.

§ 144. Record of Hearings.

A record of all hearings under this title shall be made and preserved.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 20.

§ 145. Confidentiality of Court Records.

All court records shall be confidential and shall not be open to inspection to any, but the following: the minor, the minor's parent, guardian or custodian, the Court Counselor, the

Solicitor General or the parents and the minor's attorney.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 20.01.

§ 146. Confidentiality of Law Enforcement Records.

Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults. All law enforcement records and files shall be confidential and shall not be open to inspection to any, but the following: the minor, the minor's parent, guardian or custodian, the Court Counselor, or the Solicitor General, the parents and the minor's attorney.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 20.02.

§ 147. Destruction of Records.

When a minor who has been the subject of any proceeding before the Court attains his eighteenth birthday, the Chief Justice of the Tribal Court shall order the Clerk of Court to destroy both the Court records and the law enforcement records.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 20.03.

§ 148. Appeal.

- (a) Any party to a Court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the Court within thirty days of the final order of disposition.
- (b) A decree or disposition of a hearing may be stayed by such appeal.
- (c) All appeals shall be conducted in accordance with 24 MLBS § 2501.
- (d) For purposes of appeal, a record of the proceedings shall be made available to the minor, his parents, guardian or custodian. Costs of obtaining this record shall be paid by the party seeking the appeal.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 21.

§ 149. Contempt of Court.

All willful disobedience or interference with any order of the Court constitutes contempt of court. The Court may punish an adult for contempt of court in accordance with Band Statute 1143-MLC-4, Title IX [repealed].

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 22.

CHAPTER 4

MINORS IN NEED OF CARE

Superseded by Chapter 13 (§§ 3101-3241) of this Title.

CHAPTER 5

DUTY TO REPORT ABUSE AND NEGLECT

Superseded by Chapter 13 (§§ 3101-3241) of this Title.

CHAPTER 6

DOMESTIC ABUSE PREVENTION

Section

- 401. Definitions.**
- 402. Petition for Order for Protection; Docket Priority.**
- 403. Filing of Petition.**
- 404. Hearings.**
- 405. Relief by Court.**
- 406. Temporary Order.**
- 407. Service of Order.**
- 408. Assistance of Band Law Enforcement Agency.**

- 409. **Effect of Leaving Household.**
- 410. **Security or Bond.**
- 411. **Modification of Order.**
- 412. **Titles.**
- 413. **Copy to Law Enforcement Agency.**
- 414. **Violation of Order.**
- 415. **Immunity of Law Enforcement Officers.**

Cross References

Assault and battery, *see* 24 MLBS §§ 1101, 1102.
Child care staff, abuse or neglect of children, *see* 8 MLBS § 1207.
Duty to report abuse, *see* 8 MLBS § 301.

§ 401. Definitions.

- (a) **"Domestic abuse"** is hereby defined as physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members.
- (b) **"Family or household members"** is defined as the spouse, parents and children, person related by consanguinity, and persons jointly residing in the same dwelling unit.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 47.

§ 402. Petition for Order for Protection; Docket Priority.

- (a) There shall exist an action known as a petition for an order for protection in cases of domestic abuse before the Court of Central Jurisdiction.
- (b) All actions brought under this chapter shall be given docket priority by the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 47.

§ 403. Filing of Petition.

- (a) A petition for relief under this chapter may be made by any family or household

member on behalf of himself or on behalf of minor family or household members.

- (b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.
- (c) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.
- (d) The Court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section by a person not represented by counsel.
- (e) The Court shall advise a petitioner under subsection (d) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to Band Statute and shall assist with the writing and filing of the motion and affidavit.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 48.

§ 404. Hearing.

Upon receipt of the petition, the Court shall order a hearing which shall be held not later than 14 days after the date of the order. Personal service shall be made upon the respondent not less than five days prior to the hearing. In the event that service cannot be made, the Court may set a new date.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 49.

§ 405. Relief by Court.

- (a) Upon notice and hearing, the Court may provide relief as follows:
 - (1) Restrain any party from committing acts of domestic abuse;
 - (2) Exclude the abusing party from the dwelling which parties share or from the residence of the petitioner;
 - (3) Award temporary custody or establish temporary visitation with regard to minor children of the parties;

- (4) Establish temporary support for minor children or a spouse;
 - (5) Provide counseling or other social services from the abusing party or if there are minor children;
 - (6) Order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the Law Enforcement Agency of the Band, as provided in this chapter.
- (b) Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 50.

§ 406. Temporary Order.

- (a) Where an application under this chapter alleges an immediate and present danger of domestic abuse, the Court may grant an ex parte temporary order for protection, pending a full hearing, and granting relief as the Court deems proper, including an order:
- (1) Restraining any party from committing acts of domestic abuse;
 - (2) Excluding any party from the dwelling they share or from the residence of the other except by further order of the Court.
- (b) An ex parte temporary order for protection shall be effective for a fixed period not to exceed 14 days. A full hearing, as provided by this chapter, shall be set for not later than seven days from the issuance of the temporary order. The respondent shall be served forthwith, a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.

§ 407. Service of Order.

Any order issued under this chapter shall be personally served upon the respondent.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.02.

§ 408. Assistance of Band Law Enforcement Agency.

When an order is issued under this chapter upon request of the petitioner, the Court shall order the Law Enforcement Agency of the Band to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order of protection.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.03.

§ 409. Effect of Leaving Household.

A person's right to apply for relief shall not be affected by his or her leaving the residence or household to avoid abuse.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.04.

§ 410. Security or Bond.

The Court shall not require security or bond of any party unless it deems necessary in exceptional cases.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.04.

§ 411. Modification of Order.

Upon application, notice to all parties, and hearing, the Court may modify the terms of an existing order for protection.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.05.

§ 412. Titles.

Nothing in this chapter shall affect the title to property, real or personal.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.06.

§ 413. Copy to Law Enforcement Agency.

Upon the request of the petitioner, any order for protection granted pursuant to this chapter shall be forwarded by the Clerk of Court within 24 hours to the Law Enforcement Agency of the Band with jurisdiction over the residence of the applicant.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.07.

§ 414. Violation of Order.

- (a) Whenever an order for protection is granted pursuant to this chapter, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor pursuant to Band contempt law.
- (b) Upon the filing of an affidavit by the petitioner or any Law Enforcement Officer, alleging that the respondent has violated any order for protection granted pursuant to this chapter, the Court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why he should not be found in contempt of court and punished therefore. The hearing may be held by the District in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.09.

§ 415. Immunity of Law Enforcement Officers.

A Law Enforcement Officer is not liable for a failure to perform a duty required by 8 MLBS § 414.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 51.10.

Cross References

Suits against Band officials and employees, see 24 MLBSA § 701.

CHAPTER 7

TERMINATION OF PARENTAL RIGHTS

Section

501. Procedures for Termination.

502. Petition.

503. Hearing Date; Continuance.

504. Pre-Termination Report.

505. Summons.

506. Termination Hearing.

507. Testimony.

508. Grounds for Terminations.

509. Disposition.

510. Appealability of Termination Order.

511. Enrollment Status or Degree of Blood Quantum.

Cross References

Minors in need of care, disposition, see 8 MLBS § 235.

§ 501. Procedures for Termination.

Parental rights to a child may be terminated by the Court according to the procedures in this chapter.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.

§ 502. Petition.

Proceedings to terminate parental rights shall be instituted by a petition filed by the Solicitor General on behalf of the Band pursuant to 8 MLBS § 235 or by the parents or guardian of the child. The petition shall state:

- (a) The name, birthdate and residence of the minor.
- (b) The names and residences of the minor's parent, guardian or custodian.
- (c) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.01.

§ 503. Hearing Date; Continuance.

- (a) Upon receipt of the petition, the Court shall set a date for the termination hearing which shall be not more than ten days after the Court receives the petition from the Solicitor General.
- (b) The hearing may be continued:
 - (1) Upon motion of the minor's parent, guardian or custodian.
 - (2) Upon motion of the Solicitor General by reason of the unavailability of material evidence or witnesses and the Court finds the Solicitor General has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.02.

§ 504. Pre-Termination Report.

- (a) Within two days of receiving the petition, the judge/justice shall order the preparation of a pre-termination report by the Human Resource Officer.
- (b) The Human Resource Officer shall consult with the minor's parents and all social services, health, education and other personnel who have had prior professional

contacts with the minor and his parent, guardian or custodian, to determine whether termination of parental rights is consistent with the best interests of the child. The Solicitor General may also review any of the minor's previous Court records.

- (c) The Human Resource Officer shall prepare a written report containing the professional opinions of all personnel with whom he has consulted. The report shall be presented to the Court at least two days before the termination hearing.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.03.

§ 505. Summons.

- (a) At least five days prior to the termination hearing, the Court shall issue summons to the minor, the minor's parent, guardian or custodian, and any person the Court believes necessary for the proper adjudication of the hearing and any person the minor's parent, guardian or custodian believes necessary for the proper adjudication of the hearing.
- (b) The summons shall contain the name of the Court, the title of the proceedings and the date, time and place of the hearing. A copy of the petition shall be attached to the summons.
- (c) The summons shall be delivered personally by a law enforcement officer or an appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail.
- (d) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.04.

§ 506. Termination Hearing.

The Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.05.

§ 507. Testimony.

The Court shall hear testimony concerning the circumstances that gave rise to the petition and the need for termination of parental rights.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.051.

§ 508. Grounds for Termination.

The Court may terminate the parental rights of the parent(s) to his child if it finds evidence beyond a reasonable doubt that:

- (a) The parent has abandoned his child.
- (b) The minor has suffered physical injuries willfully and repeatedly inflicted by his parent(s) upon him which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions.
- (c) The parent(s) have subjected the minor to willful and repeated acts of sexual abuse.
- (d) The voluntary written consent of a parent has been acknowledged before the Court and is accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The Court shall also certify that either the parent or Indian custodian fully understood the explanation in English and that it was interpreted into a language that the parent or Indian custodian understood.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, §§ 27.052 to 27.054.

§ 509. Disposition.

- (a) If parental rights to a child are terminated, the Court shall: place the minor with an extended family member; place the minor in a foster care or shelter care facility

which has been approved by the Band; and proceed to the adoption chapter (8 MLBS § 601) of this title.

- (b) If parental rights to a child are not terminated, the Court shall make a disposition according to 8 MLBS § 235.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.06.

§ 510. Appealability of Termination Order.

The termination order constitutes a final order for purposes of appeal.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.07.

§ 511. Enrollment Status or Degree of Blood Quantum.

No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any Band or the minor's degree of blood quantum of any Band.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 27.08.

CHAPTER 8

ADOPTION AND FOSTER CARE

Superseded by Chapter 13 (§§ 3101-3241) of this Title.

CHAPTER 9

GUARDIANSHIP AND CONSERVATORSHIP

Superseded by Chapter 13 (§§ 3101-3241) of this Title.

CHAPTER 10

CHANGE OF NAME

Section

801. Authority of Court.

802. Application for Change of Name.

803. Order.

804. Records.

§ 801. Authority of Court.

The Court of Central Jurisdiction of the Mille Lacs Band of Chippewa Indians, shall have the authority to change the name of any person upon petition of the person or upon the petition of the parents of a minor.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 43.

Cross References

Original jurisdiction of District Court, see 5 MLBS § 111.

§ 802. Application for Change of Name.

- (a) An enrolled member of the Band who shall have resided on lands under jurisdiction of the Band for one year may apply to the Court thereof, to have his name, the names of his minor children, if any, and the name of his spouse, if the spouse joins in the application, changed in the manner herein specified.
- (b) They shall state in his application the name and age of his spouse and each of his children, if any, and shall describe all lands in the state in or upon which he, his children and his spouse if their names are also to be changed by this application, claim any interest or lien, and shall appear personally before the Court and prove his identity by at least two witnesses.
- (c) If he be a minor the application shall be made by his guardian or next of kin.
- (d) Every person who, with intent to defraud, shall make a false statement in any such application shall be guilty of a fraud offense.

- (e) No minor child's name may be changed without both of his parents having notice of the pending of the application for change of name, whenever practicable, as determined by the Court.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 43.01.

§ 803. Order.

- (a) When an application meets the requirements of 8 MLBS § 802, the Court shall grant the application unless it finds that there is an intent to defraud or mislead or, in the case of the change of a minor child's name, the Court finds that such name change is not in the best interest of the child.
- (b) The Court shall set forth in the order the name and age of the spouse and each child of the applicant, if any, and shall state a description of the lands, if any, in which the applicant and his spouse and children, if any, claim to have an interest.
- (c) The Clerk shall file such order and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record by the Clerk with the county recorder of each county wherein any of the same are situated. Before doing so he shall present the same to the county auditor, who shall enter the change of name in his official records and note upon the instrument, over his official signature, the words "change of name recorded."
- (d) Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the Clerk the cost of such record. The fee of the Clerk shall be as provided by law.
- (e) No application shall be denied on the basis of the marital status of the applicant.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 43.02.

§ 804. Records.

Any order issued by the Court for change of name shall be kept as a permanent record and copies shall be filed with the appropriate Federal or State governmental agencies.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 43.

CHAPTER 11

CHILD CARE

Subchapter

- 1. Band-Owned Child Care Center**
- 2. Drop-in Child Care Centers**
- 3. Privately-Owned Child Care Centers**

Section

901
1401
Reserved

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46.

Band Statute 9503-MLC-46.

Cross References

Gaming control, *see* 15 MLBS § 1.

Wage deductions, *see* 24 MLBS § 3308.

SUBCHAPTER 1

BAND-OWNED CHILD CARE CENTER

Part

- A. Definitions**
- B. Licensing Standards and Procedures**
- C. Facility**
- D. Program**
- E. Health**
- F. Nutrition**
- G. Safety**
- H. Admissions**
- I. Administration and Management**
- J. Staff Requirements**
- K. Program Operation**

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L. Insurance	1271
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N. Day Care Learning Centers Serving Special Needs Children	1341

Historical and Statutory Notes

The enacting clause of Band Statute 1019-MLC-46.

PART A

DEFINITIONS

Section

901. Definitions.

§ 901. Definitions.

The following definitions shall be utilized when interpreting this Chapter.

- (a) **"Applicant"** means an individual who has submitted a signed and dated application to operate a Child Care Program to the Mille Lacs Band Child Care Licensing Committee "Band Assembly": means the duly elected and federally recognized governing body of the Mille Lacs Band of Ojibwe (MLBO). The Band Assembly is composed of the Speaker of the Assembly and the three District Representatives.
- (b) **"Band-Operated Child Care Programs"** means child care programs that are provided and run by the Mille Lacs Band of Ojibwe. The child care providers/staff are Band employees. This includes, but is not limited to, Head Start, Early Head Start and before and after school programs operating in the Wewinabe Early Education building as well as in community center buildings.
- (c) **"Band Lands"** means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe, or one or more members of the Mille Lacs Band of Ojibwe, and subject to the jurisdiction of the Mille Lacs Band.
- (d) **"Child"** means any person who is under the age of twelve (12). Age groupings are:
 - (1) Infant: Six (6) weeks through 15 months.
 - (2) Toddler: 16 months through 36 months.

- (3) Preschool: 37 months through 5 years.
- (4) School Age: 6 years through 11 years.
- (e) **“Consumer”** means a child who receives the services of a licensed Child Care Program and a parent or other individual having legal custody of any such child.
- (f) **“Child Care Program”** means the care of children outside of their home for part of a 24-hour day by persons unrelated to them by blood or marriage.
- (g) **“Child Care Program Coordinator or Director”** means a person having over-all responsibility for the operation of a Child Care Program including administrative duties, staff supervision and training, record keeping, program planning, budgeting, and liaison with local agencies.
- (h) **“Child Care Program Facility”** means the physical environment in which a Child Care Program takes place.
- (i) **“In-Home Child Care Program”** means a private home licensed for child care.
- (j) **“Federal Requirements”** means those requirements set forth in the Head Start Performance Standards and the Head Start Act of 2007. These requirements are binding for the Early Education programs run by the Mille Lacs Band of Ojibwe.
- (k) **“License”** means the document issued by the Band Assembly authorizing the license holder to operate a Child Care Program on Band Lands for a specified period of time and in accordance with the terms of the license and MLBO statutes.
- (l) **“License Capacity”** means the maximum number of children who can be in attendance at a Child Care Program at a given time depending upon adult to child ratios as set forth in this Chapter.
- (m) **“Child Care Licensing Committee”** means a committee which shall offer advice to the Band Assembly regarding the implementation and enforcement of this Chapter and the issuance and enforcement of Child Care Program standards. The members of the committee shall be: (1) the Commissioner of Health and Human Services; (2) the Commissioner of Education; (3) the Assistant Commissioner of Administration; and (4) the Solicitor General. Except as otherwise expressly provided in this Chapter, the committee shall have advisory powers only. The committee may delegate administrative tasks to Band staff under the supervision of one or more committee members.
- (n) **“Program”** means the overall structure and activities prepared for children in a Child Care Program.

Historical and Statutory Notes

Source:

- Band Statute 1019-MLC-46, § 1.
- Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 901.
- Band Ordinance 16-04, Title I, § 1.

Cross References

Reservation Business Committee, legislative authority to be exercised by Band Assembly, *see* 3 MLBS § 1.

PART B

LICENSING STANDARDS AND PROCEDURES

Section

- 941. Licensing Standards and Procedures.
- 942. License Required.
- 943. Unlicensed Centers.
- 944. Application Form.
- 945. Notice of Rules and Standards.
- 946. Procedures for Evaluation of Application and Issuance or Denial of License.
- 947. Background Study.
- 948. Conclusive Determinations or Dispositions.
- 949. Inspections.
- 950. Term and Contents of License.
- 951. Changes in Terms of License.
- 952. Complaints.
- 953. Access to Facility for Evaluation.
- 954. Band's Evaluation.
- 955. Correctional Order and Conditional License.
- 956. Failure to Comply.
- 957. Notice of Closure of Child Care Program.
- 958. Variances.
- 959. Policies and Procedures for Program Administration.
- 960. Emergency Planning.

§ 941. Licensing Standards and Procedures.

The licensing standards and procedures in this Part B shall be utilized for all Band- Operated Child Care Programs as well as privately owned Child Care Centers operating on Band Lands.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 2.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 941.

§ 942. License Required.

No individual, corporation, partnership, voluntary association, or other organization shall operate a Child Care Program on Band Lands unless licensed by the Band.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 942.

§ 943. Unlicensed Centers.

- (a) Any individual, corporation, partnership, voluntary association, or other organization who operates a Child Care Program on Band Lands without a License from the Band and in willful disregard of this subchapter shall be guilty of a misdemeanor and subject to prosecution under 24 MLBSA § 1054.
- (b) The Band Assembly in conjunction with the Child Care License Committee will issue a closure order to prevent the continued operation of a Child Care Program, if an individual, corporation, partnership, voluntary association, or other organization has:
 - (1) failed to apply for a License after receiving notice that a License is required for the Child Care Program or continues to operate without a License after receiving notice that a License is required for the Child Care Program;
 - (2) continued to operate the Child Care Program without a License after the License has been revoked or suspended, and a final order has been issued affirming the revocation or suspension, or the License holder did not timely appeal the revocation or suspension; or
 - (3) continued to operate the Child Care Program without a License after the License has expired.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 942.

§ 944. Application Form.

Application for license shall be made on the Application Form issued by the Child Care Licensing Committee. The application, along with all supporting documentation, including the background information required by § 947 of this Title, must be completed and returned to the Licensing Committee in order for the application to be reviewed.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 2.01.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 944.

§ 945. Notice of Rules and Standards.

The Child Care Licensing Committee shall furnish every Applicant with a copy of the licensing standards and procedures in this Part and with a copy of the other provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 2.04.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 945.

§ 946. Procedures for Evaluation of Application and Issuance or Denial of License.

- (a) **Approval of application.** The Child Care Licensing Committee shall evaluate all signed and completed applications to operate a Child Care Program on Band Lands, including all supporting documentation, within 30 days of the submission of such applications, based upon the licensing standards in this Part. If the final results of the completed background investigations of directors and staff, which are required by § 947 of this Title, are approved by the Committee, the Committee will recommend to the Band Assembly that a License be issued.
- (b) **Denial of application.** The Band may deny an application for a License if an Applicant fails to comply with applicable laws or rules, knowingly withholds relevant information, or gives false or misleading information to the Band in connection with the application or during an investigation conducted under this subchapter. An Applicant whose application has been denied by the Band must be given notice of the denial within ten (10) calendar days of the denial. Notice must be given by certified mail or personal service. The notice must state the reasons the application was denied and must inform the Applicant of the right to a contested case hearing under this subchapter. The applicant may appeal the denial by notifying the Band in writing by certified mail or personal service within 20 calendar days after receiving notice that the application was denied.

- (c) **Provisional License.** A provisional License may be issued to a new Child Care Program for a designated period not to exceed one year if the center meets necessary health, safety, and insurance requirements but does not meet all other requirements for licensure.
- (d) **Timeline.** After completing its evaluation of an application to operate a Child Care Program on Band Lands, the Child Care Licensing Committee shall make a written recommendation to the Band Assembly to issue an Unconditional License, to issue a Provisional License, or to deny the issuance of a License including its reasons for the decision, and shall forward its recommendation to the Speaker of the Assembly of the Mille Lacs Band of Ojibwe. The Band Assembly shall act on the Committee's recommendation within thirty (30) days of receipt of the Committee's recommendation. Each Applicant will be notified within ten (10) calendar days of the Band Assembly's decision by certified mail, return receipt requested, or by personal service.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, §§ 2.02, 2.07.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 946.

§ 947. Background Study.

Individuals and organizations operating Child Care Programs on Band Lands must provide the Band's Office of the Solicitor General and the Child Care Licensing Committee with background information to be submitted to either the Minnesota Bureau of Criminal Apprehension or the Bureau of Indian Affairs for a background investigation for all directors and staff as well as other individuals that may be employed by the program. All such investigations must meet the requirements of 8 MLBSA § 1212, Disqualification factors. The obligations imposed by this section are continuing obligations that must be fulfilled as long as the Child Care Program continues to operate on Band Lands.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 947.

§ 948. Conclusive Determinations or Dispositions.

A disqualification determination made by the Licensing Committee as set out in 8 MLBS § 1212 or maltreatment determination or disposition is deemed conclusive and not subject to appeal. A determination of maltreatment or disqualification will result in the denial or revocation of a license.

Historical and Statutory Notes

Source:

Band Ordinance 49.13, Title I, § 2 and Exhibit A, § 948.

§949. Inspections.

An Applicant must cooperate with an Indian Health Service inspection of its Child Care Program for health and safety purposes. By submitting an application, an Applicant consents to Band and Indian Health Service inspections of the Applicant's Child Care Program before issuance of an initial License and throughout the term of the License. The Child Care Licensing Committee will contact Indian Health Services to schedule an inspection once an application has been submitted. Such inspections may include but are not limited to:

- (a) an inspection of the program's facility;
- (b) an inspection of the program's records and documents, including but not limited to its written health policies;
- (c) an evaluation of the program by consumers of the program; and
- (d) observation of the program in operation.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 949.

§ 950. Term and Contents of License.

Every License shall specify whether it is an Unconditional or Provisional License and state the beginning and ending dates during which it is valid, and state its validity is according to the terms of the approved application.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, §§ 2.02, 2.08.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 950.

§ 951. Changes in Terms of License.

If a change in one or more terms of the license is required after the license has been issued, the applicant must apply to the Child Care Licensing Committee for approval of the changes. The Child Care Licensing Committee shall act to recommend approval or denial of the changes within thirty (30) calendar days of receipt of changes. Final approval or denial of the changes will be issued from the Band Assembly within thirty (30) days of the recommendation from the Child Care Licensing Committee.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 2.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 951.

§ 952. Complaints.

All written complaints regarding a licensing violation shall be addressed to the Child Care Program Coordinator. If the complainant is not satisfied with the Child Care Program Coordinator's response, the complainant may appeal to the Program Director. If the complainant is not satisfied with the Program Director's response, the complainant may appeal to the Child Care Licensing Committee. The decision of the Child Care Licensing Committee on the complaint shall be final.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 2.06.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 952.

§ 953. Access to Facility for Evaluation.

The Mille Lacs Band Child Care Licensing Committee, the Commissioner of Administration, and any applicable Band administrator[s], shall have access to any Child Care Facility for evaluation at any time during normal working hours and at other times by mutual agreement with the Child Care Program Coordinator. For the purpose of investigating any written complaints concerning the health and safety of the children being served by a Child Care Program, the Child Care Licensing Committee, the Commissioner of Administration, any applicable Band administrator[s], the Mille Lacs Band Assembly and/or any person designated by the Band Assembly shall have access to the child care facility at any time during a twenty-four hour day. Any complaint concerning a Child Care Facility shall be investigated immediately. [Federal Requirement].

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 2.05.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 953.

Cross References

Access by Band, child care centers, *see* 8 MLBS § 1602.

§ 954. Band's Evaluation.

- (a) Before issuing, denying, suspending, revoking, or making conditional a License, the Child Care Licensing Committee shall evaluate information gathered under this section. The Child Care Licensing Committee's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the Applicant or License holder for the recommendation to Band Assembly.
- (b) The Band Assembly shall evaluate the results of any study, inspection, or investigation to determine whether a risk of harm to the persons served by the program exists. If risk of harm exists, the Band Assembly shall either deny the application, issue a Correctional Order and Conditional License (see §955 below), or revoke the License. If the License is revoked, the Child Care Program must cease to provide services immediately and the Band Assembly may request the help of law enforcement in ensuring the program discontinues operation.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 954.

§ 955. Correctional Order and Conditional License.

- (a) If the Child Care Licensing Committee find that an Applicant or License holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the Band Assembly may issue a correction order and a conditional License to the Applicant or License holder upon the recommendation of the Child Care Licensing Committee. When making a recommendation, the Child Care Licensing Committee shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program. The correction order or conditional License must state:
 - (1) the conditions that constitute a violation of the law or rule;

- (2) the specific law or rule violated;
- (3) the time allowed to correct each violation; and
- (4) if a License is made conditional, the length and terms of the conditional License.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 955.

§ 956. Failure to Comply.

If the Band Assembly or Child Care Licensing Committee finds that Applicant or License holder has not corrected the violations specified in the correction order or conditional License, the Band may revoke the License.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 956.

§ 957. Notice of Closure of Child Care Program.

If a Child Care Program decides to close, it must send written notice sixty (60) days prior to the closure to the Band Assembly and must return its License for the Center to the Child Care Licensing Committee.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 2.10.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 957.

§ 958. Variances.

- (a) The Band Assembly may grant variances to rules that do not affect the health or safety of persons in a licensed Child Care Program if the following conditions are met:
 - (1) the variance must be requested by an Applicant or License holder on a form and in a manner prescribed by the Child Care Licensing Committee;
 - (2) the request for a variance must include the reasons that the Applicant or

License holder cannot comply with a requirement stated in the rule and the alternative equivalent measures that the Applicant or License holder will follow to comply with the intent of the rule; and

- (3) the request must state the period of time for which the variance is requested.

The Band Assembly may grant a permanent variance when conditions under which the variance is requested do not affect the health or safety of persons being served by the licensed Child Care Program, nor compromise the qualifications of staff to provide services. The permanent variance shall expire as soon as the conditions that warranted the variance are modified in any way. Any Applicant or License holder must inform the Child Care Licensing Committee of any changes or modifications that have occurred in the conditions that warranted the permanent variance. Failure to advise the Committee shall result in revocation of the permanent variance.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 2.11, § 2.12.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 958.

§ 959. Policies and Procedures for Child Care Program Administration.

- (a) A License holder shall develop program policies and procedures necessary to maintain compliance with licensing requirements under this chapter and applicable federal law.
- (b) The License holder shall:
 - (1) provide training to program staff related to their duties in implementing the program's policies and procedures developed under paragraph (a);
 - (2) document the provision of this training; and
 - (3) monitor implementation of policies and procedures by program staff.
- (c) The License holder shall keep program policies and procedures readily accessible to staff and index the policies and procedures with a table of contents or another method approved by the Child Care Licensing Committee.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 959.

§ 960. Emergency Planning.

Upon request, a License holder must cooperate with the Band's government disaster planning agency (the Tribal Emergency Response Committee), to prepare for or react to emergencies presented by natural, technical, hazardous material, and/or terrorism disasters.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 960.

PART C

FACILITY

Section

- 971. Requirement that Facilities Be Provided.**
- 972. Indian Health Service Guidelines.**
- 973. Approval of Plans.**
- 974. Minimum Usable Space.**
- 975. Stairways and Corridors.**
- 976. Toilets and Washbowls.**
- 977. Emergency Items.**
- 978. Room Temperature.**
- 979. Storage of Medications and Poisonous Items.**
- 980. Space Used by Ill Children.**
- 981. Floors.**
- 982. Cleanliness and Good Repair.**
- 983. Cots, Cribs, and Playpens.**
- 984. Equipment and Furniture.**
- 985. Clear Air and Water.**
- 986. Hours of Operation.**

§ 971. Requirement that Facilities Be Provided.

The Mille Lacs Band of Ojibwe (MLBO) hereby establishes that the Child Care Program facilities delineated in this Part C be provided for all Band-operated Child Care Centers.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 971.

Cross References

Child care centers, facilities and equipment, *see* 8 MLBSA § 1471.

§ 972. Indian Health Service Guidelines.

The facility and grounds used by the children must meet the guidelines established by Indian Health Service (I.H.S.). Any and all such standards set by the I.H.S. shall be designed to protect the requirements of the appropriate safety and sanitation authorities to include the health and safety of all persons who occupy the building.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.01.

§ 973. Approval of Plans.

Prior to construction or renovation of a proposed Child Care Facility the architectural plans must be approved in writing by a designated I.H.S. facility inspector.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46 § 3.02.

§ 974. Minimum Usable Space.

There shall be a minimum of 35 square feet of usable floor space [primary space] per child in attendance, exclusive of hallways, bathrooms, lockers, kitchens, and floor space occupied by stationary equipment, but including equipment and furnishings regularly used by children. In addition, there shall be a minimum of 75 square feet per child when using the outdoor space, or a park or recreation area within 1,500 feet of the center.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 974.

Band Ordinance 16-04, Title I, § 2.

Cross References

Child care centers, indoor space, *see* 8 MLBS § 1471.

§ 975. Stairways and Corridors.

All stairways and corridors leading to exits shall be kept clear and free from obstructions at all times.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.04.

§ 976. Toilets and Washbowls.

- (a) There must be an adequate toilet and one washbowl provided in a well- ventilated place.
- (b) There must be at least one toilet and one washbowl provided for each set of 10 children and one additional toilet and washbowl for each additional child or fraction thereof.
- (c) Toilets and washbowls must be adequate, conveniently installed and accessible; properly designed and installed for the appropriate age group.
- (d) Training chairs, instead of the required number of toilets must be provided for toddlers.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.05.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 976.

Cross References

Cleanliness and sanitation, child care centers, *see* 8 MLBS § 1510.

§ 977. Emergency Items.

A first-aid kit, battery-operated flashlight and battery-operated portable radio shall be available in every Child Care Program Facility for emergency use.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.06.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 977.

Cross References

Emergency equipment, child care centers, *see* 8 MLBS § 1506.
First-aid kit, child care centers, *see* 8 MLBS § 1505.
First-aid kit, *see* 8 MLBS § 1048.
First-aid training, *see* 8 MLBS § 1044.

§ 978. Room Temperature.

Indoor room temperature shall not be lower than 62 degrees Fahrenheit nor higher than 80 degrees Fahrenheit except in limited periods of time not to exceed one (1) hour. If the temperature remains at or above 89 degrees Fahrenheit, or remains at or below 62 degrees Fahrenheit, for longer than one hour, the center must close.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.07.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 978.

Cross References

Child care centers, room temperature, *see* 8 MLBS § 1472.

§ 979. Storage of Medications and Poisonous Items.

All medications for the children in the Child Care Program Facility shall be kept under lock at all times, those medications which require refrigeration shall be kept in a cooling unit which is secure. All household cleaning supplies and other poisonous items shall be kept in a safe and secure place.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.08.

Cross References

Administration of medicine, diapering products, sunscreen lotions and insect repellents, child care centers, *see* 8 MLBS § 1511.
Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.
Medication of children, *see* 8 MLBS § 1047.

§ 980. Space Used by Ill Children.

Space designated for use by an ill child need not be permanently arranged but shall be:

Used only for other compatible purposes: (e.g.) private office, library, staff's room or,

Effectively protected from the main activity area and screening;

Equipped with a child's cot; and

At no time shall an ill child be left without supervision.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.10.

Cross References

Children who become ill, *see* 8 MLBS § 1046.

Children with communicable diseases, *see* 8 MLBS § 1045.

Exclusion of sick children, child care centers, *see* 8 MLBS § 1512.

§ 981. Floors.

Floors must be kept clean at all times, must not have splinters, cracks, or broken linoleum, and must not be hazardous. Concrete floors shall be tiled, carpeted, or cushioned.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.11.

Cross References

Cleanliness and sanitation, child care centers, *see* 8 MLBS § 1510.

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

§ 982. Cleanliness and Good Repair.

Premises shall be kept clean and sanitary. The facility and equipment must also be kept in good repair, with no peeling paint, and free from all debris and litter.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.12.

Cross References

Cleanliness and sanitation, child care centers, *see* 8 MLBS § 1510.

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

Painted surfaces, safety, *see* 8 MLBS § 1110.

§ 983. Cots, Cribs, and Playpens.

A cot or crib must be provided for each child taking a nap in a program that includes rest. Adequate space and accessibility of exit must be maintained. Infants must be provided with cribs or playpens, regardless of type or duration of program.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.13.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 983.

§ 984. Equipment and Furniture.

All equipment and furniture must be designed for the age group and be substantial, easy to clean, and free from sharp points or corners, splinters, or paint that contains lead.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.14.

Cross References

Program, equipment and materials, *see* 8 MLBS § 1005.

Safety, furniture, equipment and toys, *see* 8 MLBS § 1109.

§ 985. Clean Air and Water.

Every Child Care Program facility must comply with the Mille Lacs Band clean air and water standards as prescribed by law.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 985.

§ 986. Hours of Operation.

The authorized hours of operation must be posted in a conspicuous place on the program's premises.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 986.

PART D

PROGRAM

Section

1001. Program Guidelines Established.

1002. Harmony with Life Style and Cultural Experience.

1003. Daily Schedule.

1004. Punishment.

1005. Access to Equipment and Materials.

1006. Types of Equipment and Materials.

Cross References

Program, child care centers, *see* 8 MLBS § 1571.

§ 1001. Program Guidelines Established.

The Mille Lacs Band of Ojibwe hereby establishes that the program guidelines in this Part D be followed for Child Care Programs.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 4.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1001.

§ 1002. Harmony with Life Style and Cultural Experience.

The program shall provide experience in harmony with life style and cultural background of the children. The cultural diversity of the children shall be reflected in the program through incorporation of their languages, food celebrations, lifestyles and child-rearing practices.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 4.01.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1002.

§ 1003. Daily Schedule.

The program daily schedule shall include the following guidelines and instructions:

- (a) Each care giver in charge of a group of children must follow written schedules of daily activities which include time for meals, snacks, sleep, toileting, and indoor/outdoor play, where applicable.
- (b) Each facility includes a designated area where a child can sit quietly or lie down to rest. A nap period is provided for children who need it and for children unable to sleep, time and space for rest and quiet play are available.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 4.02.

§ 1004. Punishment.

Care givers shall not use spanking, hitting, or other forms of physical punishment or any other technique which is humiliating, shaming, frightening, or otherwise damaging to the children. Punishment is not associated with food, rest, toilet training or isolation for illness. All facilities should utilize the concept of positive reinforcement.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 4.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1004.

Cross References

Behavior guidance, child care centers, *see* 8 MLBS § 1573.

§ 1005. Access to Equipment and Materials.

The following guides for equipment and materials shall be followed in a Child Care Program:

- (a) The quantity of materials and equipment must be sufficient to avoid excessive competition and long waits.
- (b) Materials and equipment are of sufficient quantity to provide for a variety of experiences and appeal at the individual's interest of the children in care.
- (c) Protected areas are provided, free from traffic by children and adults, where equipment and materials can be used with minimal interference.
- (d) Materials are stored in an orderly way, are attractive and accessible to children, and are arranged so that children may select, remove, and replace them either independently or with assistance.
- (e) Furniture is durable and safe, and is child-size or approximately adapted for children's ages.
- (f) Non-durable consumable equipment such as books, games, or materials and other easily breakable or lost education or recreation equipment must be replaced as needed throughout the program's operation year.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 4.04.

Cross References

Facility, equipment and furniture, *see* 8 MLBS § 984.

Safety, furniture, equipment and toys, *see* 8 MLBS § 1109.

§ 1006. Types of Equipment and Materials.

- (a) **Definitions.** For the purpose of this section, the following terms have the meanings given them.
 - (1) **"Cognitive development equipment and materials"** means equipment and materials designed to enhance components of intellectual development, such as problem solving abilities, observation skills, group skills, and symbol recognition.
 - (2) **"Dramatic play equipment"** or **"practical life activity equipment"** means equipment, such as dress up clothes, large or miniature play sets, figures, and

small and large building blocks that can be used to design a setting or space that stimulates the child's imagination and encourages role playing and the learning of practical life skills.

- (3) **"Large muscle equipment"** means equipment that is designed to enhance large muscle development and coordination, such as playground equipment, large boxes and pillows, large wheel toys, pull toys, balls, jump ropes, climbers, and rocking boats.
 - (4) **"Manipulative equipment"** means equipment that is designed to enhance fine motor development and coordination, such as pegs and peg boards, puzzles, beads and strings, interlocking plastic forms, and carpentry materials.
 - (5) **"Sensory stimulation materials"** means equipment, other than pictures, that has different shapes, colors, and textures that stimulate the child's visual and tactile senses. Examples of sensory stimulation materials include mobiles, crib attached activity boxes, sand and water activity materials, swatches of different textures of cloth, and wooden or plastic items of different shapes and colors.
- (b) **General requirements.** Each Child Care Program must have the quantity and type of equipment for the age categories of children served. Equipment must be appropriate to the age categories and any special needs of the children served. A center must have enough equipment for the number of children for which the center is licensed unless the use of equipment is rotated among groups of children.
- (c) **Equipment and materials for infants.** The minimum equipment and materials required for a center serving infants are as follows:
- (1) one area rug or carpet per group;
 - (2) a variety of non-folding child size chairs including infant seats and high chairs; one per child, or a minimum of four per group;
 - (3) one changing table for every group of 8 to 10 infants;
 - (4) one foot operated, covered diaper container per changing table;
 - (5) one crib, cot, or portable crib waterproof mattress per child; and
 - (6) one linear foot of low, open shelving per child.
- (d) **Equipment and materials for toddlers.** The recommended equipment and materials for a center serving toddlers are as follows:
- (1) Arts and crafts supplies, such as clay or play dough, tempera or finger paints,

colored and white paper, paste, collage materials, paint brushes, washable felt type markers, crayons, blunt scissors, and smocks;

- (2) 2 books per child;
- (3) Large building blocks (soft large blocks, soft rock blocks, soft brick blocks);
- (4) Small building blocks (ABC blocks, see through animal blocks);
- (5) Pieces of dramatic play equipment (apples, basket, tree) (food, cash register, bags);
- (6) Double sided easel;
- (7) Puzzles and/or matching games;
- (8) Manipulative sets (stringing beads, connectors, etc.);
- (9) Musical instruments;
- (10) Washable soft toys; and
- (11) Sensory materials to provide visual and tactile stimulation (books w/texture, sensory blocks, sensory bottles, textured art work, plants, fish, sensory table, texture balls).

(e) **Equipment and materials for preschoolers.** The recommended equipment and materials for a center serving preschoolers are as follows:

- (1) Arts and crafts supplies, such as clay or play dough, tempera or finger paints, colored and white paper, paste, collage materials, paint brushes, washable felt type markers, crayons, blunt scissors, and smocks;
- (2) 2 books per child;
- (3) Large building blocks (Lincoln logs, large wooden, cardboard boxes, rock blocks, brick blocks);
- (4) Small blocks (Legos, ABC wooden blocks, city blocks);
- (5) Pieces of dramatic play equipment (sink, babies, stove, food, and refrigerator/apples, tree, basket, smock, cash register/flowers, dirt, pots, gloves, shovel);
- (6) Double sided easel;

- (7) Mirror 12 inches by 36 inches;
 - (8) Puzzles, number games and/or letter games;
 - (9) Manipulative sets (connectors, counters, gears, pipe tubes, magna tiles);
 - (10) Pictures at the child's level; and
 - (11) Musical instruments.
- (f) **Equipment and materials for school-age children.** The recommended equipment and materials for a center serving school-age children are as follows:
- (1) Arts and crafts supplies, such as clay or play dough, tempera or finger paints, colored and white paper, paste, collage materials, paint brushes, washable felt type markers, crayons, blunt scissors, and smocks;
 - (2) 2 books per child;
 - (3) Pieces of dramatic play equipment (apples, basket, tree) (food, cash register, bags);
 - (4) Musical instruments;
 - (5) Pictures at the child's level;
 - (6) 1 set of cognitive development equipment per child (puzzle, etc.); and
 - (7) Sets of manipulative materials (connectors, counters, gears, magna tiles, pipe tubes).

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1006.
Band Ordinance 16-04, Title I, § 3.

PART E

HEALTH

Section

1041. Health Guidelines Established.

1042. Health Responsibilities.

1043. Information Obtained from Parents.

- 1044. First Aid, Cardiopulmonary Resuscitation (CPR), Abusive Head Trauma (AHT), and Sudden Unexpected Infant Death Syndrome (SUIDS) Training.**
- 1045. Exclusion of Sick Children.**
- 1046. Children who Become Ill.**
- 1047. Medication.**
- 1048. First Aid Kit.**
- 1049. Crib Safety Requirements.**
- 1050. Reduction of Risk of Sudden Infant Death Syndrome.**
- 1051. Toilets and Hand Sinks.**

Cross References

Child care centers, health and safety, *see* 8 MLBS § 1501.
Information and instruction from parents, *see* 8 MLBS § 1143.

§ 1041. Health Guidelines Established.

The Mille Lacs Band of Ojibwe hereby establishes the health guidelines in this Part E to be followed for Child Care Programs.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 5.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1041.

§ 1042. Health Responsibilities.

The director, or designated personnel, of each program shall be responsible for observation of health and development of children, handling illness at the center, accident prevention and emergency procedures, and keeping health records complete.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 5.01.

§ 1043. Information Obtained from Parents.

Written evidence will be obtained from each parent of the following information:

- (a) Emergency contact information on each child, including written permission for each child to receive emergency treatment.
- (b) Proof of immunizations appropriate for the child's age.

- (c) Any prescriptions or medications which the child is currently taking.
- (d) Proof of physical exam administered to the child annually or according to the well-child schedule for children under 3 years.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 5.02.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1043.
Band Ordinance 16-04, Title I, § 4.

§ 1044. First Aid, Cardiopulmonary Resuscitation (CPR), Abusive Head Trauma (AHT) and Sudden Unexpected Infant Death Syndrome (SUIDS) Training.

- (a) All teachers and assistant teachers, staff and volunteers, must satisfactorily complete, within 90 days of the start of work, at least eight (8) hours of First Aid and CPR training as well as additional training in Sudden Unexpected Infant Death Syndrome (SUIDS), and Abusive Head Trauma (AHT) training, unless this has been satisfactorily completed within the previous year. The health and safety training must be:
 - (1) repeated on a yearly basis;
 - (2) documented in the person's personnel record and indicated in the center's staffing chart; and
 - (3) provided by a licensed physician, a registered nurse, or a licensed practical nurse, or other certified instructor trained to provide the instruction or certified by the American Red Cross.
- (b) On the date of the initial licensure, at least one staff person with health and safety training must be present at the center when children are in care and at least one staff person with the health and safety training must accompany children on field trips.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 5.03.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1044.

Cross References

Safety, *see* 8 MLBS § 1101.

§ 1045. Exclusion of Sick Children.

- (a) A child with any of the following conditions or behaviors is a sick child and must be excluded from the center. If the child becomes sick while at the center, the child must be isolated from other children in care and the parent(s), guardian(s), or emergency contact(s) called immediately. A sick child must be supervised at all times. The license holder must exclude a child:
- (1) With a reportable illness or condition that a health care provider determines to be contagious and has not had sufficient treatment to reduce the health risk to others;
 - (2) with chicken pox until the child is no longer infectious or until the lesions are crusted over;
 - (3) who has vomited once that day;
 - (4) who has had three or more abnormally loose stools that day;
 - (5) who has contagious conjunctivitis or pus draining from the eye;
 - (6) who has a bacterial infection such as streptococcal pharyngitis or impetigo and has not completed 24 hours of antimicrobial therapy;
 - (7) who has unexplained lethargy;
 - (8) who has lice, ringworm, or scabies that is untreated and contagious to others;
 - (9) who has a 100 degree Fahrenheit axilla or higher temperature of undiagnosed origin before fever reducing medication is given;
 - (10) who has an undiagnosed rash or a rash attributable to a contagious illness or condition;
 - (11) who has significant respiratory distress;
 - (12) who is not able to participate in child care program activities with reasonable comfort; or
 - (13) who requires more care than the program staff can provide without compromising the health and safety of other children in care.
- (b) The license holder must post or give a notice to the parents of exposed children the same day a parent notifies the center of a child's illness or condition a contagious reportable disease, or lice, scabies, impetigo, ringworm, or chicken pox.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 5.04.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1045.

Cross References

Exclusion of sick children, child care centers, *see* 8 MLBS § 1512.

§ 1046. Children Who Become Ill.

Child Care Programs must provide care for a child who becomes ill. Supervision must be provided until the child is picked up by the authorized person[s].

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 3.09.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1046.

Cross References

Exclusion of sick children, *see* 8 MLBS § 1512.
Space used by ill children, *see* 8 MLBS § 980.

§ 1047. Medication.

When a child is to be given oral or surface medication, written instructions by a physician or dentist must be provided and written authorization to administer medication must be given by the parent(s). Medication must be labeled, stored under lock and out of reach of children.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 5.05.

Cross References

Administration of medicine, child care centers, *see* 8 MLBS § 1511.
Storage of medications, *see* 8 MLBS § 979.

§ 1048. First-aid Kit.

The license holder must ensure that a first aid kit is available within the center. The kit must contain sterile bandages and band-aids, sterile compresses, scissors, an ice bag or cold pack, an

oral or surface thermometer and adhesive tape. A current first aid manual must be included. The first aid kit and manual must be accessible to the staff at the center and taken on field trips.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 5.06.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1048.

Band Ordinance 16-04, Title I, § 5.

Cross References

Child care centers, first aid kit, *see* 8 MLBS § 1505.

Emergency items, *see* 8 MLBS § 977.

§1049. Crib Safety Requirements.

- (a) The license holder should access and consult the United States Consumer Product Safety Commission website for crib safety information. Annually, from the date printed on the license, all license holders shall check all their cribs' brand names and model numbers against the United States Consumer Product Safety Commission website listing of unsafe cribs and shall maintain written documentation for inspection for each crib showing that the review has been completed.
- (b) All license holders must maintain the following documentation for every crib used by or that is accessible to any child in care:
 - (1) the crib's brand name; and
 - (2) the crib's model number; and
 - (3) a notation that the crib was not identified as unsafe on the United States Consumer Product Safety Commission website or the license holder has taken the action directed by the United States Consumer Product Safety Commission to make the crib safe.
- (c) Any crib for which the license holder does not have the documentation required under subsections (a) and (b) must not be used by or be accessible to children in care.
- (d) Documentation of the review completed under this section shall be maintained by the license holder on site and made available to parents of children in care, the Band, and Indian Health Service.
- (e) On at least a monthly basis, the license holder shall perform safety inspections of every crib used by or that is accessible to any child in care, and must document compliance with current Minnesota crib requirements (as stated in the most current

MN statutes).

- (f) Upon discovery of any unsafe condition identified by the license holder, the Licensing Committee, or Indian Health Services during the safety inspection, the license holder shall immediately remove the crib from use and ensure that the crib is not accessible to children in care, and as soon as practicable, but not more than two business days after the inspection, remove the crib from the area where child care services are routinely provided.
- (g) Documentation of the inspections and actions taken with unsafe cribs required shall be maintained on site by the license holder and made available to parents of children in care, the Band, and Indian Health Service.
- (h) The Band may issue a licensing action if a license holder fails to comply with the requirements of this section.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1049.

§1050. Reduction of Risk of Sudden Unexpected Infant Death Syndrome (SUIDS).

When a staff person is placing an infant to sleep, the staff person must place the infant on the infant's back, unless the license holder has documentation from the infant's parent directing an alternative sleeping position for the infant, and must place the infant in a crib with a firm mattress. The license holder must not place pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant, except a small blanket which may be used to swaddle an infant. Licensed child care providers must meet the crib requirements under § 1049 of this Title.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1050.

Band Ordinance 16-04, Title I, § 6.

§1051. Toilets and Hand Sinks.

Toilets and hand sinks located in a well-ventilated area must be provided in the center.

- (a) The center must have at least one toilet and one hand sink for every 10 children accessible in the center.
- (b) Hand sinks for children must not be used for custodial work or food preparation.

- (c) Single service hand towels or warm air dryers must be available to dry hands and designed for easy use by the children.
- (d) Toilet facilities must be cleaned daily. Toilet training chairs must be emptied, washed with soap and water, and disinfected after each use. Toilets and seats must be washed with soap and water and disinfected when soiled or at least daily.
- (e) Hand washing procedures:
 - (1) Staff person: a staff person must wash his/her hands with soap and water after changing a child's diaper, after using toilet facilities, before and after handling food or eating, after sneezing or coughing or blowing his/her nose, after combing hair, after handling garbage and after spending time outdoors.
 - (2) Child: A child's hands must be washed with soap and water after a diaper change, after use of a toilet or toilet training chair, before and after handling food or eating, and after spending time outdoors. Staff must monitor hand washing and assist a child who needs help. The use of common basin or hand sink filled with standing water is prohibited.
- (f) The license holder shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.
- (g) A diaper must be changed only in the diaper changing area. The diaper changing area must be separate from the areas used for food storage, food preparation, and eating. The area must have a hand sink equipped with hot and cold running water within three feet of the diaper changing surface, a smooth, nonabsorbent diaper changing surface and floor covering, and a container operated by a foot pedal for soiled and wet diapers.

The center must have and follow diaper changing procedures that have been developed in consultation with a health consultant. The license holder must post the diaper changing procedures in the diaper changing area.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1051.

PART F
NUTRITION

Section

- 1071. Nutrition Guidelines Established.**
- 1072. Availability of Meals and Snacks.**
- 1073. Sanitary Food-Handling.**
- 1074. Diet of Infant.**
- 1075. Drinking Water.**
- 1076. Staff to Sit with Children During Meals and Snacks.**
- 1077. Nutritionist.**
- 1078. Menus.**

§ 1071. Nutrition Guidelines Established.

The Mille Lacs Band of Ojibwe hereby establishes that the nutrition guidelines in this Part F be followed for Child Care Programs.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 6.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1071.

§ 1072. Availability of Meals and Snacks.

All Child Care programs must provide or ensure the availability of adequate and nutritious meals and snacks appropriate for the ages and needs of the children served. Bag lunches provided by the parent are acceptable. Each regular meal and two snacks or two meals and one snack shall be provided daily for each child in care five through eight hours. A child must be offered a second serving with each meal or snack.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 6.01.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1072.

Cross References

Availability of meals and snacks, child care centers, *see* 8 MLBS § 1541.

§ 1073. Sanitary Food-Handling.

All Child Care Program personnel shall understand sanitation and methods of handling, preparing, and serving food in a safe and sanitary manner following the standards set forth in the USDA Child and Adult Care Food Program (CACFP).

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 6.02.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1073.

Cross References

Sanitation, food, child care centers, *see* 8 MLBS §1545.

§ 1074. Diet of Infant.

The diet of an infant shall be determined by the parents in conjunction with the standards set forth in the USDA Child and Adult Care Food Program (CACFP). The provider must ensure that sanitary procedures and practices are used to prepare, handle, and store formula, milk, breast milk, solid foods, and supplements. Procedures must be reviewed and certified by a health consultant. A center serving infants must:

- (a) Obtain written dietary instructions from the parent of the child;
- (b) Have the infant's feeding schedule available in the food preparation area;
- (c) Offer the child formula or milk and nutritionally adequate solid foods in prescribed quantities at specified time intervals; and
- (d) Label each child's bottle with the child's name and whether the bottle contains formula or breast milk.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 6.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1074.

Cross References

Infant diets, child care centers, *see* 8 MLBS § 1544.

Information and instruction from parents, *see* 8 MLBS § 1143.

§ 1075. Drinking Water.

Drinking water shall be freely available to all children regardless of age. Each child shall be provided with an individual drinking container.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 6.04.

§1076. Staff to Sit with Children During Meals or Snacks.

There must be Child Care Program staff seated with the children during meal and snack times.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 6.05.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1076.

Cross References

Staff to sit with children at meals or snacks, child care centers, *see* 8 MLBS § 1542.

§ 1077. Nutritionist.

All meals and snacks shall be critiqued and approved by a licensed nutritionist and posted in a conspicuous place for potential information.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 6.06.

§ 1078. Menus.

When food is provided by the license holder, menus must be planned on a monthly basis and be available for review upon request. A sample menu must be provided to parents at the time of admission. Menus must comport with the nutritional requirements of the USDA, CACFP.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1078.

PART G

SAFETY

Section

- 1101. Emergency or Accident Procedures.
- 1102. Fire Extinguishers.
- 1103. Electrical Outlets.
- 1104. Telephones.
- 1105. Hazardous Areas, Conditions and Objects.
- 1106. Painted Surfaces.

Cross References

Child care centers, health and safety, *see* 8 MLBS §1501.
First-aid training, *see* 8 MLBS § 1044.

§ 1101. Emergency or Accident Procedures.

- (a) The applicant must develop written policies governing emergencies, accidents, and injuries. The license holder must ensure that written records are kept about incidents, emergencies, accidents, and injuries that have occurred.
- (b) The license holder must keep a record of instruction to all staff persons about how to carry out the policies.
- (c) The policies must contain:
 - (1) Procedures for administering first aid;
 - (2) Safety rules to follow in avoiding injuries, burns, poisoning, choking, suffocation, and traffic and pedestrian accidents;
 - (3) Procedures for the daily inspection of potential hazards;
 - (4) Procedures for fire prevention and procedures to follow in the event of a fire, identifying primary and secondary exits, building evacuation routes, the phone number of the fire department, persons responsible for the evacuation of children, and areas for which they are responsible and instruction on how to use a fire extinguisher and how to close off the fire area;
 - (5) Procedures to follow in the event of a blizzard, tornado, or other natural disaster;

- (6) Procedures to follow when a child is missing;
 - (7) Procedures to follow if an unauthorized person or a person who is incapacitated or suspected of abuse attempts to pick up a child or if no one comes to pick up a child;
 - (8) Procedures for recording accidents, injuries, and incidents involving a child enrolled in the center. The written record must contain the name and age of the person involved; date and place of the accident, injury or incident; type of injury; action taken by staff; and to whom the accident, injury, or incident was reported; and
 - (9) Procedures mandating an annual analysis of the license holder's records and procedures and any modification of the center's policies based on the analysis.
- (d) The license holder must maintain a written record of accidents, injuries, emergencies, and incidents.
 - (e) The license holder must develop procedures to address when the parent(s), guardian(s), or emergency contact(s) fail(s) to pick up a child upon the closing of the child care center, or if the child must be removed from the center as described in §1045. Furthermore, the license holder will note this information in a log to be maintained in the license holder's administrative records.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 7.
 Band Ordinance 31-09, § 1, Exhibit A, § 1731.
 Band Ordinance 49-13, Title I, § 2 and Exhibit A, §§ 1101 and 1409.
 Band Ordinance 16-04, Title I, §§ 7 and 13.

§ 1102. Fire Extinguishers.

Fire extinguishers must be serviced annually by a qualified inspector. The name of the inspector and date of the inspection must be written on a tag attached to the extinguisher.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 7.01.
 Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1102.

Cross References

Child care centers, fire extinguisher inspections, *see* 8 MLBS § 1508.

§ 1103. Electrical Outlets.

All electrical outlets must be covered or protected when not in use.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 7.02.

Cross References

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

§ 1104. Telephones.

A telephone that is not coin operated must be located within the Child Care Program center. A list of emergency numbers must be posted next to the telephone. The 911 emergency number, when available, must be posted. If 911 emergency number is not available, the numbers listed must be those of the local fire department, police department, emergency transportation, and poison control center.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 7.03, § 7.04.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1104.

Cross References

Child care centers, telephone and posted telephone numbers, *see* 8 MLBS § 1507.

§ 1105. Hazardous Areas, Conditions and Objects.

- (a) **Hazardous areas.** Kitchens, stairs, and other hazardous areas must be inaccessible to children except during periods of supervised use.
- (b) **Maintenance of areas used by children.** The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors, and ceilings. Rugs must have a non-skid backing or be firmly fastened to the floor and be free from tears, curled or frayed edges, and hazardous wrinkles.
- (c) **Shielding of hot surfaces.** Radiators, fireplaces, hot pipes, and other hot surfaces in areas used by children must be shielded or insulated to prevent burns.

- (d) **Electrical outlets.** Except in a center that serves only school age children, electrical outlets must be tamper proof or shielded when not in use.
- (e) **Condition of equipment, furniture and toys.**
 - (1) Equipment and furniture must be durable, in good repair, structurally sound and stable following assembly and installation. Equipment must be free of sharp edges, dangerous protrusions, points where a child's extremities could be pinched or crushed, and openings or angles that could trap part of child's body. Tables, chairs, and other furniture must be appropriate to the age and size of children who use them. Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.
 - (2) Infant rattles must meet the United States consumer product safety standards contained in the Code of Federal Regulations, title 16, sections 1510.1 to 1510.4, as adopted on May 23, 1978. All toys and other articles intended for use by children under three years of age that present choking, aspiration, or ingestion hazards because of small parts must meet the size standards in Code of Federal Regulations, title 16, sections 1501.1 to 1501.5, as adopted on June 15, 1979.
- (f) **Hazardous objects.** Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1105.

§ 1106. Painted Surfaces.

All painted surfaces accessible to children shall be free of toxic materials.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 7.09.

Cross References

Peeling paint, *see* 8 MLBS § 982.

PART H
ADMISSIONS

Section

- 1141. Admissions Guidelines and Policies Established.**
- 1142. Age Ranges.**
- 1143. Information and Instruction from Parents.**
- 1144. Communication Between Family and Facility.**

Cross References

Sample menus provided at time of admission, child care centers, *see* 8 MLBS § 1543.

§1141. Admissions Guidelines and Policies Established.

The Mille Lacs Band of Ojibwe hereby establishes the admissions guidelines and policies for Child Care Programs in this Part H.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 8.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1141.

§ 1142. Age Ranges.

Each Child Care Program shall have an admission policy that specifies the age ranges of children being served.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 8.01.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1142.

§ 1143. Information and Instruction from Parents.

- (a) Admission procedures developed must provide the care-giver with sufficient information and instruction from the parent to enable the caregiver to make decisions or act in behalf of the child's welfare in the absence of the parent.
- (b) Prior to admission of the child, the caregiver shall obtain written information from a person or persons legally responsible for the child covering the following items:

- (1) The child's full name, birth date, and current address.
 - (2) The name and address of the parent or parents, or the person(s) legally responsible for the child, and the telephone number with instructions as to how the parent(s) responsible for the child may be reached when child is in the program.
 - (3) Names of persons authorized to take the child from the facility and their address, and names of persons not so authorized.
 - (4) Names, address, and telephone numbers of the health source to be called in case of emergency. Health statement and immunization data as specified in 8 MLBSA § 1043 et seq.
 - (5) Name, addresses, and telephone numbers of person(s) who can assume responsibility for the child if the parent cannot be reached in an emergency.
 - (6) Signed authorization to the effect that the parent gives permission to the center to act in an emergency situation when the parent cannot be reached or is delayed in arriving. (In Loco Parentis.)
 - (7) Written permission for participation in specific research, experimentation or publicity activities.
 - (8) All children must have the expressed written permission from their parent or guardian to participate in activities away from the physical facility of the Child Care Program. Sponsorship of the activity shall not be considered a reason to waive this requirement. All written permissions shall be activity specific and must include the type of activity, location, date and time of departure and anticipated arrival. Blanket permission shall not be allowed.
 - (9) Special diet needs shall be followed as stated in the following sections.
 - (10) Written statement of income provided by parents, [Federal Requirement].
- (c) All information received during admission eligibility process is and must remain confidential.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 8.02, 8.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1143.

Cross References

Diet of infant, *see* 8 MLBS § 1074.

§ 1144. Communication Between Family and Facility.

Admission policies and procedures must ensure initial and continuing communication between the family and the facility to ensure compatibility in their mutual responsibility for the child's welfare.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 8.0392.

Cross References

Participation in field trips, child care centers, *see* 8 MLBS § 1572.

PART I

ADMINISTRATION AND MANAGEMENT

Section

1171. Administration and Management Established.

1172. Information to be Submitted to Licensing Committee.

1173. Program Coordinator.

1174. Hiring Policies: Personnel Policies of Mille Lacs Band of Ojibwe.

§ 1171. Administration and Management Established.

The Mille Lacs Band of Ojibwe hereby establishes the administration and management for Child Care Programs.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 9.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1171.

§ 1172. Information to be Submitted to Licensing Committee.

Every child program shall submit administrative and management information to the Mille Lacs Band Child Care Licensing Committee. Along with the application for licensure, the information must include:

- (a) Admission procedures and requirements.

- (b) Required information to be kept in each child's confidential record.
- (c) Individualized Educational Program Plan.
- (d) Description of provisions for emergency medical and/or dental care.
- (e) Written documentation on insurance coverage in an amount sufficient to protect the interest of the children and staff.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 9.01.

§ 1173. Program Coordinator.

Every Child Care Program shall have a Program Coordinator who shall be responsible and accountable for meeting the requirements of this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 9.02.

§ 1174. Hiring Policies: Personnel Policies of Mille Lacs Band of Ojibwe.

All Child Care Programs licensed by the Mille Lacs Band of Ojibwe:

- (a) Will follow the hiring policies of the Mille Lacs Band.
- (b) Will follow any additional Federal policies necessary to comply with applicable Federal grant requirements.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 9.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1174.

PART J

STAFF REQUIREMENTS

Sections

- 1201. Staff Requirements Established.
- 1202. Staff Development Training.
- 1203. Job Descriptions.
- 1204. Staff-to-Child Ratios.
- 1205. Persons Capable of Training Staff.
- 1206. Competence and Health of Personnel.
- 1207. Abuse or Neglect of Children.
- 1208. Duty to Report Abuse or Neglect.
- 1209. Special Definitions.
- 1210. Applicant Background Study.
- 1211. General Staff Qualifications.
- 1212. Disqualification Factors.
- 1213. Directors; General Requirements.
- 1214. Teacher Qualifications.
- 1215. Assistance Teacher Qualifications.
- 1216. Aide Qualifications.
- 1217. Orientation Training.
- 1218. In-Service Training.

Cross References

Child care centers, qualifications and training of applicant and staff, *see* 8 MLBS § 1441.

§ 1201. Staff Requirements Established.

The Mille Lacs Band of Ojibwe hereby establishes, in this Part J, the staff requirements for Child Care Programs.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 10.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1201.

§ 1202. Staff Development Training.

15 hours of staff development training for all regular administrative, teaching and support services staff members, including volunteers, must be a part of every Child Care Program's educational program.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 10.01.
Band Ordinance 16-04, Title I, § 8.

§ 1203. Job Descriptions.

Every Child Care Program shall maintain up-to-date job descriptions for all staff which include mandatory staff training participation as an aspect of career development.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 10.02.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1203.

§ 1204. Staff-to-Child Ratios.

(a) The following staffing ratios shall apply with these specific age groups.

Children of age:	6 weeks-16 months	1 adult to 4 children
	17-33 months	1 adult to 4 children
	34 months-5 years	1 adult to 10 children
	6-11 years	1 adult to 12 children

(b) The adult-child ratio must be maintained throughout the day. This ratio is based solely on the number of teacher aides in the classroom compared to the total number of children. Children shall not be left unattended for any reason.

(c) Volunteers for all age groupings may not be counted in the staff-to-child ratio, and must be at least 16 years of age and participate in an orientation to the program.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, §§ 10.03, 10.05, 10.06.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1204.
Band Ordinance 16-04, Title I, § 9.

§ 1205. Persons Capable of Training Staff.

At least one person on the staff must be knowledgeable of the following fields and capable of training adult staff: Early childhood education, growth, development and practices; and first-aid and home nursing.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 10.04.

§ 1206. Competence and Health of Personnel.

All personnel in regular contact with children, including volunteers and drivers, shall be physically, mentally, and emotionally competent to care for children and free from serious communicable disease such as tuberculosis and hepatitis, with negative tuberculosis testing which have been completed within the last twelve (12) months. If the result of the TB test is positive for TB or indeterminate, a chest x-ray is required once every five years there-after. All personnel will be subject to a drug-test upon starting their position and may be subject to random testing throughout their employment.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 10.07.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1206.

Cross References

Child care centers, general staff qualifications, *see* 8 MLBS § 1443.

§ 1207. Procedures for Responding to Reports of Abuse or Neglect.

Employees of any Child Care Center licensed by the Mille Lacs Band are prohibited from abusing and/or neglecting, any child placed under their direct/indirect supervision at a Child Care Center. For the purposes of this section, definitions for abuse and neglect shall be the same as Chapter 13, section 3103.

- (a) Allegations of abuse shall be reported to the Program Director. If the Program Director is the alleged perpetrator, the report may be made to the Commissioner of Education. The Program Director or Commissioner of Education shall be responsible for overseeing the investigation into the allegations.

- (b) For allegations of abuse or neglect, the Program Director will:

- (1) Immediately respond to all abuse or neglect allegations. This will include documenting in writing what was witnessed or heard. Documentation shall be compiled in a written statement which shall include:
 - (A) Name of the employee alleged to have committed the abuse or neglect;
 - (B) Time and location of the observed abuse or neglect;
 - (C) Exact eye-witness description of what actually occurred, hearsay is not admissible; and
 - (D) Name, date and signature of the person making the report, unless good cause is shown for the reporter to remain anonymous.
 - (ii) Ensure confidentiality to the fullest extent.
 - (iii) Provide a pre-termination inquiry which allows the employee to respond to the allegations. The Program Director has the discretion to follow this inquiry with a suspension in order to continue the investigation, or deem the investigation completed at this time. Per the Mille Lacs Band Personnel handbook, the employee may not be placed on suspension for longer than 1 to 5 days while the investigation is completed.
 - (iv) Inform the alleged perpetrator he/she is not allowed to have contact with any child in the Center's care until the completion of the investigation.
 - (v) Protect the alleged victim from intimidation, retribution, or further abuse.
 - (vi) Notify Tribal Police. If necessary, Tribal Police may conduct a separate investigation into any criminal conduct arising from the matter.
- (c) If a preponderance of evidence of abuse or neglect is found, the perpetrator's employment at the Child Care Center will be terminated immediately.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 10.09.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1207.

Cross References

Confrontation of witnesses and assistance of counsel, *see* 1 MLBS § 6.
Domestic abuse prevention, *see* 8 MLBS § 401.
Due process, *see* 1 MLBS § 8.
Duty to report abuse and neglect, *see* 8 MLBS § 301.
Minors in need of care, *see* 8 MLBS § 201.

§ 1208. Duty to Report Abuse or Neglect.

It is the policy of the Mille Lacs Band of Ojibwe to require all personnel of any Child Care Program under its jurisdiction to report any suspected physical and/or sexual abuse of children or physical/psychological neglect of children. Said written report shall be addressed to Family Services.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 10.08.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1208.
Band Ordinance 16-04, Title I, § 10.

Cross References

Duty to report abuse and neglect, *see* 8 MLBS § 301.

§ 1209. Special Definitions.

- (a) **“Accredited Course”** means a course that is offered for credit by or through an accredited post-secondary institution.
- (b) **“Education”** means accredited course work from an accredited post-secondary institution in child care development; children with special needs, early childhood education methods of theory; curriculum planning; child study techniques; family studies; child psychology; parent involvement; behavior guidance; child nutrition; child health and safety; early childhood special education methods of theory; child abuse and neglect prevention; recreational sports, arts, and crafts methods of theory; or coordination of community and school activities.
- (c) **“Experience”** means paid or unpaid employment serving children as a teacher, assistant teacher, or aide, in a licensed child care center, or work as a student intern in a licensed center, a school operated by the commissioner of education or by a legally constituted local school board or a private school.
- (d) **“Student Intern”** means a student of a post-secondary institution assigned by that institution for a supervised experience with children. The experience must be

in a licensed center, an elementary school operated by the commissioner of education, or a legally constituted local school board, or private school approved under rules administered by the commissioner of education. The term includes a person who has practiced teaching, student teaching, or carrying out a practicum or internship.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1209.

§ 1210. Applicant Background Study.

An applicant background study of the applicant and all staff persons who will have direct contact with or access to persons served by the child care program is required.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1210.

§ 1211. General Staff Qualifications.

Staff persons who have direct contact with or access to children, and volunteers who have direct contact with or access to children and are not under the direct supervision of a staff person, must meet the qualifications in this section:

- (a) Persons who supervise staff persons or volunteers must be at least 18 years old.
- (b) Staff persons must be physically able to care for children and must not present a risk of transmission of reportable communicable disease.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1211.

§ 1212. Background Disclosure and Disqualification Factors.

A staff person with direct contact with or access to children in care must disclose the arrest, conviction, and applicant background information if that staff person:

- (a) has a conviction of, has admitted to, has an adjudication of delinquency for, has been charged and is awaiting trial for, or a preponderance of the evidence indicates the person has committed:

- (1) a crime against a child;
 - (2) an act of physical or sexual abuse;
 - (3) neglect;
 - (4) a felony;
 - (5) the same or similar crimes as those in this subsection listed in the laws of another state or of the United States or of any Tribal law;
- (b) has a conviction of, has admitted to, has an adjudication of delinquency for, has been charged and is awaiting trial for, or a preponderance of the evidence indicates the person has committed any misdemeanor offense under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children. The Licensing Committee may evaluate the nature and time of a misdemeanor assault charge as well as other types of misdemeanor crimes not specified in this section to determine whether employment is appropriate.
- (c) has mental illness as defined in Minnesota Statutes, section 245.462, subdivision 20, and the behavior has or may have a negative effect on the ability of the person to provide child care or is apparent during the hour's children are in care; or
- (d) abuses prescription drugs or uses controlled substances, as named in Minnesota Statutes, chapter 152, or alcohol to the extent that the use or abuse impairs or may impair the person's ability to provide child care or is apparent during the hour's children are in care.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1212.

§ 1213. Directors; General Requirements.

A director must have:

- (a) a baccalaureate or advanced degree in early childhood education; or
- (b) a baccalaureate or advanced degree and coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1213.

§ 1214. Teacher Qualifications.

- (a) **Teacher qualifications, general.** A teacher must be at least 18 years old and meet the qualifications in subsection (b) with the following exceptions:
- (1) A registered nurse or licensed practical nurse is qualified as a teacher for infants only.
 - (2) A registered nurse may be used to meet the staff-to-child ratios for a teacher for sick care in a center licensed to operate a sick care program.
- (b) **Teacher education and experience requirements.** A teacher with the credential listed in column A must have the education and experience listed in column B

Column A

1. A high school or General Education Development (GED) diploma
2. Diploma from Association Montessori Internationale; preprimary credential, primary diploma, or provisional certificate from American Montessori Society, without a baccalaureate degree
3. Preprimary credential, primary diploma, or provisional certificate from the American Montessori Society; or diploma from the Association Montessori Internationale with a baccalaureate degree
4. Minnesota technical institute certificate as a Child Development Assistant

Column B

Experience: 4,160 hours as assistant teacher

Education 24 quarter credits

Experience: 2,080 hours as assistant teacher, intern

Education: 12 quarter credits

Experience: 1,040 hours as assistant teacher, intern

Education: no additional required

Experience: 2,080 hours as assistant teacher

Education: 6 quarter credits.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1214.

§ 1215. Assistant Teacher Qualifications.

Assistant Teachers must have:

- (a) At least a child development associate credential;
- (b) Enrolled in a program leading to an associate or baccalaureate degree; or
- (c) Enrolled in a child development associate credential program to be completed within 1 year.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1215.
Band Ordinance 16-04, Title I, § 11.

§ 1216. Aide Qualifications.

Must be at least 16; if under 18, must be directly supervised by a teacher or assistant teacher at all times except with sleeping children or assisting with toileting and diapering.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1216.

§ 1217. Orientation Training.

The license holder must ensure that every staff person, and volunteers who will have direct contact or access to children and are not under the direct supervision of a staff person, are given orientation training and successfully complete the training before starting assigned duties. Completion of the orientation must be documented in the individual's personnel record. The orientation training must include information about:

- (a) the center's philosophy, child care program, and procedures for maintaining health and safety, and handling emergencies and accidents; and
- (b) specific job responsibilities.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1217.

§ 1218. In-Service Training.

A license holder must ensure that an annual in-service training plan is developed and carried out and that it meets the requirements in the following items:

- (a) The in-service training plan must:
 - (1) be consistent with the center's child care program plan;
 - (2) meet the training needs of individual staff persons as specified in each staff person's annual evaluation report.
- (b) The director and all program staff persons must annually complete a minimum of 15 hours per person of in-service training.
- (c) The annual requirements must be completed within the year for which it was required.
- (d) In-service training requirement must be met by participation in early childhood development training. In this section, "early childhood development training" means training in child development; children with special needs; early childhood education methods of theory; curriculum planning; child study techniques; family studies; parent involvement; behavior guidance; child nutrition; child health and safety; recreation, sports, arts, and crafts, methods of theory, early childhood special education methods of theory; or child abuse and neglect prevention.
- (e) First aid and CPR training may be counted as in-service training.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1218.

PART K

PROGRAM OPERATION

Section

1241. Program Operation Guidelines Established.

1242. Records.

1243. Informational Documents.

1244. Personnel Records.

1245. Child Records.

1246. Administrative Records.

1247. Reporting Requirements.

1248. Other Reporting.

§ 1241. Program Operation Guidelines Established.

The Mille Lacs Band of Ojibwe hereby establishes that Child Care Programs be operated as provided in this Part K.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 11.
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1241.

§ 1242. Records.

- (a) The center shall maintain the following types of records:
 - (1) Daily attendance records of children,
 - (2) Employment of staff and their evaluations,
 - (3) Health records of children and staff,
 - (4) Financial records,
 - (5) Insurance, and
 - (6) Vehicle registration and proof of maintenance
- (b) Also records of permission from parents for children for emergency treatment, field trips, special medications, arrangement for picking up children from the center other than parents, approval of architectural plans for renovation plans from a health agency in the community, records of volunteers' time and health status, and an annual inventory of all equipment shall be maintained.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 11.01.

Cross References

Records, child care centers, *see* 8 MLBS § 1671.

§ 1243. Informational Documents.

The Program Coordinator shall assure the following written documents:

- (a) A clear definition of the type of service being offered to the children and their parents,
- (b) Hours of operation,
- (c) Written admissions and enrollment procedures,
- (d) A clearly outlined list of fees and a plan for payment which is given to an interested inquirer on request,
- (e) Regulations covering the belongings of children,
- (f) Transportation arrangements.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 11.02.

§ 1244. Personnel Records.

The license holder must ensure that a personnel record of each staff person is maintained at the center. The personnel record for each staff person must contain all of the below:

- (a) The staff person's name, home address, home telephone number, and date of birth;
- (b) The staff person's documentation indicating that the staff person meets the requirements of the staff person's job position and the education and experience requirements specified by this chapter; and
- (c) Documentation that the staff person has completed the required first aid and CPR training.

Historical and Statutory Notes

Source:

Ordinance 49-13, Title I, § 2 and Exhibit, § 1244.

§ 1245. Child Records.

- (a) At the time of enrollment in the center, the license holder must ensure that a record is maintained on each child. The record must contain:
 - (1) The child's full name, birth date, and current home address;
 - (2) The name, address and telephone number of the child's parent(s) or legal guardian(s);
 - (3) Instructions on how the parent(s) or guardian(s) can be reached while the child is in the care of the center;
 - (4) The names and telephone numbers of any persons authorized to take the child from the center;
 - (5) Written authorization for the license holder to act in an emergency or when a parent cannot be reached or is delayed;
 - (6) For children age six (6) weeks to 36 months, a description of the child's eating, sleeping, toileting and communication habits, and effective methods for comforting the child;
 - (7) Documentation of any dietary or medical needs of the child; and
 - (8) Documentation of parent(s) or guardian(s) failing to pick up the child.
- (b) The license holder shall not disclose a child's record to any person other than the child, the child's parent or guardian, the child's legal representative, employees of the license holder, the Band and law enforcement unless the child's parent or guardian has given written consent or as otherwise required by law.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1245.

§ 1246. Administrative Records.

All records, policies, and procedures required by this chapter must be maintained within the center and be available for inspection at the request of the Band or IHS.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1246.

§ 1247. Reporting Requirements.

- (a) All licensed Child Care Programs must develop policies and procedures for reporting suspected child maltreatment and must develop policies and procedures for reporting complaints about the operation of the child care program. The policies and procedures must include the telephone numbers of the Tribal child protection agency and Tribal law enforcement.
- (b) The policies and procedures required in paragraph (a) must be available upon request.
- (c) A child care license must include a statement that informs parents who have concerns about their child's care that they may call the licensing entity. The Band shall print the telephone number for the Band in bold and large font on the license issued to child care providers.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1247.

§ 1248. Other Reporting.

- (a) The license holder must inform law enforcement and the Licensing Committee immediately of the death of a child in care at the center.
- (b) The license holder must inform the Licensing Committee within 24 hours of any injury to a child in care in the center that required treatment by a physician.
- (c) The license holder must inform the Licensing Committee within 24 hours of the occurrence of a natural disaster during hours of operation.
- (d) The license holder must ensure that the appropriate health authority is notified within 24 hours of receiving the parent's report of any suspected case of reportable disease as specified in the current Minnesota regulations governing child care centers (as stated in the most current Minnesota Rules).

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1248.
Band Ordinance 16-04, Title I, § 12.

PART L
INSURANCE

Section

1271. Insurance of Facility and Vehicles.

§ 1271. Insurance of Facility and Vehicles.

The License holder shall assure the following types of insurance: the center facility, and any vehicle owned or operated by the center or its staff, shall have full comprehensive insurance coverage.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 12.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1271.

PART M
FINANCIAL RECORDS

Section

1301. Financial Records to be Maintained.

1302. Income and Expenditures.

1303. Fees.

1304. Purchase and Inventory Policies.

§ 1301. Financial Records to be Maintained.

The Mille Lacs Band of Ojibwe hereby establishes that the financial records provided for by this Part M be maintained.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 13.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1301.

§ 1302. Income and Expenditures.

The center shall maintain a record of all income regardless of its derivation and record all expenditures.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 13.01.

§ 1303. Fees.

Records shall be kept of all fees obtained from parents, and of their disbursement.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 13.02.

§ 1304. Purchase and Inventory Policies.

The Program Coordinator shall have written policies covering the purchases of the organization and the maintenance of an inventory of the center's equipment.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 13.03.

PART N

CHILD CARE LEARNING CENTERS SERVING CHILDREN WITH SPECIAL NEEDS

Sections

1341. Integration of Children with Special Needs.

1342. Consultant.

1343. Obtainment of Information about Special Problems or Needs.

1344. Progress Evaluations.

§ 1341. Integration of Children with Special Needs.

Child Care Programs are encouraged to integrate children with special needs into the group of

typical children whenever feasible for the center and for the child. The special needs of the child must be met.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 14.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1341.

§ 1342. Meeting with Special Education Teacher and Family.

- (a) The Child Care Program shall conduct a meeting between the family of a child with special needs, a special education teacher, and any other personnel as necessary prior to the enrollment of any child with special needs.
- (b) The Child Care Program shall have written program modifications based on the needs of the individual child with special needs. These program modifications shall be understood by the program staff.
- (c) Modified equipment and supplies as needed shall be available.
- (d) Training of all staff as needed shall be arranged.
- (e) Modification of the physical facilities shall be made as needed and approved by the I.H.S. inspector.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 14.01.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1342.

§ 1343. Obtainment of Information About Special Problems or Needs.

Prior to the admission of any child with special needs, the Child Care Program shall obtain information from the parents, the physician and the state and local education agency about any special problems or needs that may affect the child's use of the program. Where indicated, a psychological evaluation may be made if necessary, and must be made available to the center with the parents' permission.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 14.02.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1343.

§ 1344. Progress Evaluations.

The progress of the child with special needs shall be evaluated no less than annually by a qualified consultant.

Historical and Statutory Notes

Source:

Band Statute 1019-MLC-46, § 14.03.

SUBCHAPTER 2

DROP-IN CHILD CARE PROGRAMS

<u>Part</u>	<u>Section</u>
A. Applicability	1401
B. Special Definitions	1402
C. Special Licensure Requirements	1403
D. Special Staff Requirements	1408
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PART A

APPLICABILITY

Section

1401. Applicability.

§ 1401. Applicability.

In addition to the provisions found in Subchapter I of this Chapter, the following sections are applicable to Subchapter 2: Drop-in Child Care Programs only.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1401.

PART B

SPECIAL DEFINITIONS

Section

1402. Special Definitions.

§ 1402. Special Definitions.

- (a) **“Controlling individual”** means a public body, governmental agency, business entity, officer, owner, or managerial official whose responsibilities include the direction of the management or policies of a drop-in child care program. For purposes of this subchapter, owner means an individual who has direct or indirect ownership interest in a corporation, partnership, or other business association issued a license under this subchapter. For purposes of this subchapter, managerial official means those individuals who have the decision-making authority related to the operation of the program, and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program.
- (b) **“Drop-in child care program”** means a nonresidential program of child care in which children participate on a onetime only or occasional basis up to a maximum of 90 hours per child, per month that provides care for children listed in the age categories defined above. A drop-in child care program must be licensed under Mille Lacs Band of Ojibwe Statutes governing drop-in child care centers.
- (c) **“Experience”** for purposes of drop-in child care centers, includes paid or unpaid employment serving children as a teacher, assistant teacher, aide, or a student intern in a licensed child care center, or work as a student intern in a licensed center, a school operated by a state commissioner of education or by a legally constituted local school board, or a private school approved under rules administered by a state commissioner of education.
- (d) **“Interpretive guidelines”** means a policy statement that has been published pursuant to this subchapter which provides interpretation, details, or supplementary information concerning the application of laws or rules. Interpretive guidelines are published for the information and guidance of consumers, providers of service, Band agencies, and others concerned.
- (e) **“Supervision”** for purposes of drop-in child care centers, when a program staff person is within sight and hearing of a child at all times so that the program staff can intervene to protect the health and safety of the child. When an infant is placed in a crib room to sleep, supervision occurs when a staff person is within sight or hearing of the infant. When supervision of a crib room is provided by

sight or hearing, the center must have a plan to address the other supervision component.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1402.

PART C

SPECIAL LICENSURE REQUIREMENTS

Section

1403. Application for Licensure.

1404. Sanction Orders; Appeals.

1405. Requirements to Post Conditional License, Correction, or Sanction Order.

1406. Fine Schedule.

1407. License or Certification Fee.

§ 1403. Application for Licensure.

An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under this subchapter must apply for a license. The application must be made on the forms and in the manner prescribed by the Band in Chapter 11, subchapter 1 of this Title. The Band will provide the applicant with instruction in completing the application and provide information about the rules and requirements that affect the applicant.

- (a) An application for licensure must specify one or more controlling individuals as an agent who is responsible for dealing with the Band on all matters provided for in this subchapter and on whom service of all notices and orders must be made. The agent must be authorized to accept service on behalf of all of the controlling individuals of the program. Service on the agent is service on all of the controlling individuals of the program. It is not a defense to any action arising under this subchapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.
- (b) An applicant or license holder must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees, subcontractors,

and volunteers about the program's drug and alcohol policy.

- (c) An applicant and license holder must have a program grievance procedure that permits persons served by the program and their authorized representatives to bring a grievance to the highest level of authority in the program.

Historical and Statutory Notes

Source:

Band Ordinance 31-09, § 1, Exhibit A, § 1705.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1403.

§ 1404. Sanction Orders; Appeals.

- (a) In addition to making a license condition under section 955, the Band may suspend or revoke a license or impose a fine against a license holder who does not comply with applicable law or rule. When ordering sanctions authorized under this section, the Band shall consider the nature, chronicity, or severity of the violation of the law or rule and the effect of the violation on the health, safety or rights of the persons served by the program.
 - (1) **License suspension or revocation.** The Band may act immediately to suspend or revoke a license if a license holder fails to comply fully with applicable laws or rules, the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, if a license holder or an employee subject to a background study has a disqualification, if a license holder knowingly withholds relevant information from or gives false or misleading information to the Band in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules. A license holder who has had a license suspended or revoked must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended or revoked.
 - (2) **Fines.** If the license holder is ordered to pay a fine, the notice must inform the license holder of the responsibility for payment of fines and the right to appeal. The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the Band may issue a second fine or suspend the license until the license holder complies. A license holder shall promptly notify the Band, in writing, when a violation specified in a sanction order to forfeit a fine is corrected. If upon re-inspection the Band determines that a violation has not been corrected as indicated by the order to forfeit a fine, the Band may

issue a second fine. The Band shall notify the license holder by certified mail or personal service that a second fine has been assessed. The license holder may appeal the second fine as provided under this section.

- (b) **Appeal.** Appeals must be made within five business days of receipt of a sanction.
- (1) An appeal hearing must be conducted by the Court of Central Jurisdiction within 30 calendar days, unless an extension is requested by either party and granted for good cause. The burden of proof under this section shall be limited to the Band's demonstration that reasonable cause exists that the license holder's actions or failure to comply with applicable law or rule poses, or the actions of other individuals or conditions in the program poses an imminent risk of harm to the health, safety, or rights of persons served by the program.
 - (2) The Court shall issue findings of fact, conclusions, and a recommendation within ten (10) working days from the date of the hearing. The Band shall consider, but shall not be bound by, the recommendations of the Court. The Band's final sanction order shall be issued within ten (10) working days from the Court's recommendation and the appellant must be notified immediately of the Band's final sanction order.
 - (3) When a license holder appeals a suspension or revocation, the license holder continues to be prohibited from operation of the program. A timely appeal shall stay payment of the fine until the Band issues a final sanction order.

Historical and Statutory Notes

Source:

Band Ordinance 31-09, § 1, Exhibit A, § 1720.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1404.

§ 1405. Requirement to Post Conditional License, Correction, or Sanction Order.

For license holders, upon receipt of any correction, order of conditional license, or sanction order issued by the Band under this subchapter, the license holder shall post the correction order, order of conditional license, or sanction order in a place that is conspicuous to the people receiving services and all visitors to the facility for two years. When the correction order, order of conditional license, or sanction order is accompanied by a maltreatment investigation memorandum, the investigation memoranda must be posted with the correction order, order of conditional license, or sanction order.

Historical and Statutory Notes

Source:

Band Ordinance 31-09, § 1, Exhibit A, § 1719.
Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1405.

§ 1406. Fine Schedule.

- (a) Fines shall be assessed as follows (subject to amendment by Band Ordinance):
 - (1) The license holder shall forfeit \$1,000 for each determination of maltreatment of a child for which the license holder is determined responsible for the maltreatment;
 - (2) The license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child, and failure to submit a background study; and
 - (3) The license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above.
- (b) For purposes of this section, “occurrence” means each violation identified in the Band’s fine order.
- (c) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

Historical and Statutory Notes

Source:

Band Ordinance 31-09, § 1, Exhibit A, § 1721.
Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1406.

§ 1407. License or certification fee

Drop-in center programs with a licensed capacity shall pay an annual nonrefundable license or certification fee based on the following schedule (subject to amendment by Band Ordinance):

<u>Licensed Capacity</u>	<u>License/Certification Fee</u>
1-24 person	\$225
25-49 persons	\$340
50-74 persons	\$450
75-99 persons	\$565
100-124 persons	\$675
125-149 persons	\$900
150-174 persons	\$1,050
175-199 persons	\$1,200
200-224 persons	\$1,350
225 or more persons	\$1,500

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1407.

PART D

SPECIAL STAFF REQUIREMENTS

Section

1408. Staff Requirements.

§ 1408. Staff Requirements.

- (a) A drop-in child care program must be operated under the supervision of a person qualified as a teacher, defined by 8 MLBS § 1214.
- (b) A drop-in child care program must have at least two persons on staff whenever the program is operating.
- (c) In a drop-in child care center, Children that are younger than age 2-1/2 must be in a separate group. This group must be cared for in an area that is physically separated from older children.
- (d) A drop-in child care program must maintain a minimum staff ratio for children age 2- 1/2 or greater of one staff person for each ten children.
- (e) The drop-in child care program will have additional staff on call as a mandatory condition of their employment. The minimum child-to-staff ratio may not be exceeded and no more children may be admitted to the Facility until additional staff has arrived.

- (f) In a drop-in child care program, the minimum staff-to-child ratio for infants up to 16 months of age is one staff person for every four infants. The minimum staff-to-child ratio for children age 17 months to 30 months is one staff for every seven children.
- (g) In drop-in care programs that serve infants and older children, children up to age 2- 1/2 may be supervised by assistant teachers, as long as other staff are present in appropriate ratios (see 8 MLBS § 1447 for qualifications).
- (h) The minimum staff distribution pattern for a drop-in child care program serving children age 2-1/2 or greater is: the first staff member must be a teacher; the second, third, and fourth staff members must have at least the qualifications of a child care aide; the fifth staff member must have at least the qualifications of an assistant teacher; the sixth, seventh, and eighth staff members must have at least the qualifications of a child care aide; and the ninth staff person must have at least the qualifications of an assistant teacher (see 8 MLBS § 1447 for qualifications).
- (i) A drop-in child care program may care for siblings 16 months or older together in any group, when the program is serving 20 children or less; however, all staffing requirements of this sub-chapter must be maintained at all times. For purposes of this subdivision, sibling is defined as sister or brother, half-sister or half-brother, or stepsister or stepbrother.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1408.

PART E

SPECIAL HEALTH AND SAFETY REQUIREMENTS

Section

1409. Mandatory Reporting.

1410. Reporting Requirements.

1411. Additional Health and Safety Requirements.

1412. Facility Safety.

§ 1409. Mandatory Reporting.

The license holder must report neglect, physical or sexual abuse of children in the home, school, or community setting to Family Services.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1410.

Band Ordinance 16-04, Title I, § 14.

§ 1410. Reporting Requirements.

- (a) All licensed drop-in child care centers must develop policies and procedures for reporting suspected child maltreatment and must develop policies and procedures for reporting complaints about the operation of a child care program. The policies and procedures must include the telephone numbers of the local child protection agency for reporting suspected maltreatment and local law enforcement.
- (b) The policies and procedures required in paragraph (a) must be made available upon request.
- (c) Any reports of child abuse or neglect within the drop-in child care center must be submitted to the License holder for investigation.
 - (1) The report must be compiled in a written statement which shall include:
 - (i) Name of the employee alleged to have committed the abuse or neglect;
 - (ii) Time and location of the observed abuse or neglect;
 - (iii) Exact eye-witness description of what actually occurred, hearsay is not admissible; and
 - (iv) Name, date and signature of the person making the report, unless good cause is shown for the reporter to remain anonymous.
 - (2) The License Holder shall have discretion to terminate the alleged perpetrator's employment immediately.
 - (3) The License Holder shall inform local law enforcement and comply with any investigation of criminal charges arising from the matter.
- (d) A child care license must include a statement that informs parents who have concerns about their child's care that they may call the Child Care Licensing Committee. The Band shall print the telephone number for the Band in bold and in large font on the license issued to the child care providers.

Historical and Statutory Notes

Source:

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1411.

Band Ordinance 16-04, Title I, § 14.

§ 1411. Additional Health and Safety Requirements.

- (a) A license holder for a drop-in center program will not administer medicine.
- (b) The indoor space and equipment of the center must be clean and disinfected daily and as needed.
- (c) The toilet rooms of the center must be cleaned daily. Toilet training chairs must be emptied, washed with soap and water, and disinfected after each use. Toilets and seats must be washed with soap and water and disinfected when soiled or at least daily.
- (d) A diaper must be changed only in the diaper changing area. The diaper changing area must be separate from areas used for food storage, food preparation, and eating. The area must have a hand sink equipped with hot and cold running water within three feet of the diaper changing surface, a smooth nonabsorbent diaper changing surface and floor covering, and a sanitary container for soiled and wet diapers.
- (e) The center must have and follow diaper changing procedures that have been developed in consultation with a health consultant. The license holder must post the diaper changing procedures in the diaper changing area.
- (f) A child's hands must be washed with soap and water after a diaper change, after use of a toilet or toilet training chair, and before eating a meal or snack. Staff must monitor hand washing and assist a child who needs help. The use of a common basin or a hand sink filled with standing water is prohibited.
- (g) A staff person must wash his or her hands with soap and water after changing a child's diaper, after using toilet facilities, and before handling food or eating.
- (h) The license holder shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.
- (i) The license holder must ensure that a first aid kit is available within the center. The kit must contain sterile bandages and Band-Aids, sterile compresses, scissors, an ice bag or cold pack, an oral or surface thermometer, and adhesive tape. A current first aid manual must be included. The first aid kit and manual must be accessible to the staff in the center.

- (j) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.
- (k) The center must have a battery operated flashlight and battery operated portable radio.
- (l) Equipment and furniture must be durable, in good repair, structurally sound and stable following assembly and installation. Equipment must be free of sharp edges, dangerous protrusions, points where a child's extremities could be pinched or crushed, and openings or angles that could trap part of a child's body. Tables, chairs and other furniture must be appropriate to the age and size of children who use them. Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.
- (m) Infant rattles must meet the United States consumer product safety standards contained in the Code of Federal Regulations, title 16, sections 1510.1 to 1510.4, as adopted on May 23, 1978. All toys and other articles intended for use by children under three years of age that present choking, aspiration, or ingestion hazards because of small parts must meet the size standards in Code of Federal Regulations, title 16, sections 1501.1 to 1501.5, as adopted on June 15, 1979.
- (n) The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors, and ceilings. Rugs must have a nonskid backing or be firmly fastened to the floor and be free from tears, curled or frayed edges, and hazardous wrinkles.
- (o) Food and water must meet and comply with IHS standards.
- (p) Any play equipment that has tubing, tunnels or otherwise prevents monitoring and observation of activity occurring inside the structure must have walls that are partially or completely transparent, or allow for surveillance of the structure's interior.

Historical and Statutory Notes

Source:

Band Ordinance 31-09, § 1, Exhibit A, § 1734.
 Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1412.
 Band Ordinance 16-04, Title I, § 14.

§ 1412. Facility Safety.

- (a) If the Band has reasonable cause to believe that a potential hazard exists, the Band may request another inspection and written report by a fire marshal, building official, or health authority to verify the absence of hazard, the fees for which the

license holder is responsible.

- (b) Radiators, fireplaces, hot pipes, and other hot surfaces in areas used by children must be shielded or insulated to prevent burns.
- (c) Except in a center that serves only school-age children, electrical outlets must be tamper proof or shielded when not in use.
- (d) A minimum temperature of 68 degrees Fahrenheit must be maintained in indoor areas used by children.
- (e) Kitchens, stairs and other hazardous areas must be inaccessible to children except during periods of supervised use.
- (f) Fire extinguishers must be serviced annually by a qualified inspector. The name of the inspector and date of the inspection must be written on a tag attached to the extinguisher.

Historical and Statutory Notes

Source:

Band Ordinance 31-09, § 1, Exhibit A, § 1735.
Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1413.
Band Ordinance 16-04, Title I, § 14.

CHAPTER 12

CHILD SUPPORT

<u>Subchapter</u>	<u>Section</u>
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SUBCHAPTER 1

GENERAL PROVISIONS

<u>Section</u>
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2003. Definitions.
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2006. Support Order.

- 2007. Providing Income Information.**
- 2008. Calculation of Gross Income.**
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- 2010. Social Security or Veterans' Benefit Payments Received on Behalf of a Child.**
- 2011. Potential Income.**
- 2012. Deduction from Gross Income for Non-Joint Children.**
- 2013. Presumptive Child Support Obligation.**
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- 2015. Non-Cash Support.**
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- 2018. Equitable Distribution of Child Support.**
- 2019. Modification of Orders or Decrees.**
- 2020. Child Care Support.**
- 2021. Medical Support.**
- 2022. Ability to Pay; Self-Support Adjustment.**
- 2023. Deviation from Presumptive Child Support Obligation.**
- 2024. Notice to Band Authority.**

Historical and Statutory Notes

The Preamble of Ordinance 26-94 provides: "Be it enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of establishing Child Support and Enforcement for adequate support and nurturing of the children under the jurisdiction of the Band."

The title of Ordinance 06-10 is: "An Ordinance repealing Subchapter I of Chapter 12 (Child Support) in Title 8 of the Mille Lacs Band Statutes Annotated, and amending this Subchapter in order to ensure that the children under the jurisdiction of the Mille Lacs Band of Ojibwe are provided with parental support and the financial means to promote healthy growth development; and to establish a child support enforcement program within the Band government. This Bill also creates Subchapter II (Paternity) of Chapter 12 of Title 8 to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote and help provide for the child's best interest. In addition, this Bill amends Subchapter III (Enforcement) of Chapter 12 of Title 8 to create a consistent enforcement system of child support collection."

The Preamble of Ordinance 06-10 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of repealing Subchapter I of Chapter 12 in Title 8 of the Mille Lacs Band Statutes Annotated in its entirety to ensure that the children under the jurisdiction of the Mille Lacs Band of Ojibwe are provided with parental support and the financial means to promote healthy growth development; and to establish a child support enforcement program within the Band government. This Bill also creates Subchapter II (Paternity) of Chapter 12 of Title 8 to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote and help provide for the child's best interest. In addition, this Bill amends Subchapter III (Enforcement) of Chapter 12 of Title 8 to create a consistent enforcement system of child support collection."

Cross References

Removal of child from proposed adoptive home, support orders, *see* 8 MLBS § 617.

§ 2001. Findings and Purpose.

The Band Assembly finds and determines:

- (a) The health and well-being of the Band depends on the healthy growth, development and well-being of the Band's children.
- (b) The healthy growth, development and well-being of the Band's children require that proper care and support be given to them.
- (c) The healthy growth, development and well-being of the Band's children are jeopardized by financial difficulties and hardship facing many Band children due to a lack of parental support.
- (d) It is a purpose of this chapter and in the best interest of the Band to provide for the establishment of child support obligations that are consistent with traditional Ojibwe values and that motivate parents to provide their children with regular and adequate support in accordance with the parents' resources and abilities.
- (e) It is a purpose of this chapter and in the best interest of the Band to utilize the civil justice system of the Court of Central Jurisdiction and the Band Authority to implement and enforce the child support obligations established in accordance with this chapter.
- (f) This chapter reaffirms Band sovereignty and self-determination by providing for the exercise of Band jurisdiction over child support and paternity cases involving Band children and families.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 1.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2001.
Band Ordinance 01-21.

§ 2002. Sovereign Immunity.

Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the Mille Lacs Band of Ojibwe.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 9.
Band Ordinance 06-10, Title I, §1, Exhibit A, § 2002.

§ 2003. Definitions.

For the purposes of this chapter, the following terms shall have the meaning assigned to them in this section.

- (a) **“Apportioned Veterans’ Benefits”** means the amount the Veterans Administration deducts from a veteran’s award and disburses to a child or a child’s representative payee. The appointment of veteran’s benefits shall be that determined by the Veterans Administration and governed by the U.S. Code of Federal Regulations (C.F.R.), Title 38, §§ 3.450-3.458.
- (b) **“Arrears”** are the amounts that accrue pursuant to an obligor’s failure to comply with a support order. Past support contained in a support order is arrears if the court order does not contain repayment terms. Arrears also arise by the obligor’s failure to comply with the terms of a court order for repayment of past support. An obligor’s failure to comply with the terms for repayment of amounts owed for past support turns the entire amount owed into arrears.
- (c) **“Band”** means the Mille Lacs Band of Ojibwe.
- (d) **“Band Authority”** means the Mille Lacs Band Child Support Enforcement Program.
- (e) **“Band coverage”** means medical, dental, or other health care benefits provided by the Indian Health Service or the Band’s Circle of Health program.
- (f) **“Basic support”** means the basic support obligation determined under the child support guideline in § 2014 of this Title. Basic support includes support for a child’s housing, food, clothing, transportation, and education costs, and other expenses relating to the child’s care. Basic support does not include monetary contributions for a child’s childcare expenses or medical or dental expenses.
- (g) **“Bona fide career change”** or **“aandanokiid awiya,”** as used in this chapter, means an educational pursuit or change of profession that is made in good faith. Any party claiming a bona fide career change for purposes of calculating child support shall bear the burden of proof.
- (h) **“Child”** means a person who is younger than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction, or a person for whom child support may be ordered pursuant to § 2006 (i).
- (i) **“Court”** means the Band’s Court of Central Jurisdiction of the Mille Lacs Band of Ojibwe.
- (j) **“Financial Institution”** means a savings association, bank, trust company, credit union, industrial loan and thrift company, bank and trust company, or savings association, and includes a branch or detached facility of a financial institution.

- (k) **“Gross Income”** means the income of a parent calculated under § 2008 of this Title.
- (l) **“Health care coverage”** means medical, dental or other health care benefits that are provided by one or more health plans. Health care coverage includes fee for service, health maintenance organization, and other types of private health insurance and public health care coverage under which medical services are available to the dependent child(ren).
- (m) **“Health plan”** means a plan, other than any form of public medical, dental or other health care assistance, that provides medical, dental, or other health care benefits and is:
- (1) provided on an individual or group basis;
 - (2) provided by an employer or union;
 - (3) purchased in the private market; or
 - (4) available to a person eligible to carry insurance for a joint child, including a party’s spouse or parent.
- (n) **“IV-D case”** means a case where a party has applied for child support services from a public authority or has assigned to a tribe or a state rights to child support because of the receipt of public assistance under Title IV-D of the Social Security Act, 45 U.S.C. § 309.
- (o) **“Joint child”** means a child of both parents in a support proceeding, whether child support is sought from one or both parents in the proceeding.
- (p) **“Medical support”** means providing medical, dental or other health care benefits for a joint child by carrying health care coverage for the joint child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, or uninsured medical expenses of the joint child.
- (q) **“Non-cash support”** means support provided in the nature of goods and/or services rather than in cash, which contributes directly to meeting the needs of a child. Non-cash support may include services such as making repairs to an automobile or a home, the clearing or upkeep of property, providing a means for travel, providing needed resources for a child’s participation in tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value.
- (r) **“Non-joint child”** means a child of one but not both of the parents in a support proceeding.
- (s) **“Obligee”** means a person to whom child support payments are owed.

- (t) **“Obligor”** means a person obligated to pay child support.
- (u) **“Parentage proceeding”** means the proceeding in which paternity is established through a contested or uncontested process.
- (v) **“Parental Income for determining Child Support (PICS)”** means gross income calculated under §2008 of this Title minus deductions for non-joint children allowed under §2012 of this Title.
- (w) **“Payer of funds”** means a person or entity that provides funds to an obligor, including an employer as defined under 26 U.S.C. § 3401(d), an independent contractor, a payer of workers’ compensation benefits or unemployment insurance benefits, a financial institution, or a tribe making per capita payments.
- (x) **“Parent”** means the lawful mother or father of a child or, where applicable throughout this statute, a third-party guardian.
- (y) **“Per capita income”** and **“per capita payments”** mean monthly bonus payments, minor trust payments to enrolled tribal members authorized by a Tribal Net Revenue Allocation Plan, or both. Per capita payments do not include economic support payments, stimulus payments, or any settlement monies.
- (z) **“Primary physical custodian”** means the parent who provides the primary residence for a child and is responsible for the majority of the day-to-day decisions concerning a child.
- (aa) **“Public assistance”** means temporary financial assistance given to needy persons by a tribal or state government agency.
- (bb) **“Public authority”** means a local unit of government acting on behalf of a tribe or a state that is responsible for child support enforcement and includes but is not limited to the Band Authority.
- (cc) **“Social Security benefit”** means the monthly retirement, survivors, or disability insurance benefits that the Social Security Administration provides to a parent for that parent’s own benefit or for the benefit of a joint child. Social Security benefits do not include Supplemental Security Income benefits that the Social Security Administration provides to a parent for the parent’s own benefit or to a parent due to the disability of a child.
- (dd) **“Support payment”, “support obligation”, “child support payment” or “child support obligation”** means a payment or obligation for basic support, childcare support, and/or medical support of a child pursuant to a support order.
- (ee) **“Support order”** means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by any court (including but not limited to the Band’s

Court) or administrative agency of a competent jurisdiction in a marriage dissolution, legal separation, annulment, parentage, custody, child support or other proceeding that establishes or modifies a child support obligation.

- (ff) **“Survivors and dependents’ educational assistance”** means funds disbursed by the Veterans Administration under 38 U.S.C. chap. 35 to a child or the child’s representative payee.
- (gg) **“TANF”** means Temporary Assistance to Needy Families provided under Title IV-A of the Social Security Act.
- (hh) **“Third-Party Guardian”** means a person legally appointed by a parent, spouse, or court of competent jurisdiction having the duty and authority to provide care and control of a child.
- (ii) **“Title IV-A”** refers to Title IV-A of the Social Security Act under which the federal government provides funds to tribes or states to provide temporary financial assistance to families using federal dollars.
- (jj) **“Title IV-D”** means Title IV-D of the Social Security Act under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.
- (kk) **“Tribal Court”** means a court established by a tribe, including but not limited to the Band’s Court.
- (ll) **“Tribe”** or **“tribal”** mean a state or federally recognized Indian tribe, including but not limited to the Band.
- (mm) **“Tribunal”** means a tribal or state court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.
- (nn) **“Uninsured medical expenses”** means a joint child’s reasonable and necessary medical, dental, or other health-related expenses if the joint child is not covered by a health plan, Band coverage, or public coverage when the expenses are incurred.
- (oo) **“Unreimbursed medical expenses”** means a joint child’s reasonable and necessary medical, dental, or other health-related expenses if the joint child is covered by a health plan, Band coverage, or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to deductibles, co-payments and expenses for orthodontia, prescription eyeglasses and contact lenses, but not over-the-counter medications if coverage is under a health plan.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T I, § 4.04.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2003.
Band Ordinance 01-21.

§ 2004. Band Authority.

- (a) There is hereby established the Mille Lacs Band Child Support Enforcement Program (the Band Authority) within the Band's Department of Administration.
- (b) The Band Authority is authorized to provide child support enforcement services to all parents and children subject to the jurisdiction of the Band. The Band Authority is authorized, among other things, to:
 - (1) locate custodial parents and noncustodial parents, as well as their sources of income, assets, and debts;
 - (2) seek a determination of parentage;
 - (3) seek the establishment or modification of child support;
 - (4) enforce support orders and laws relating to the duty of support;
 - (5) make reasonable information requests from state and tribal governments, to include other Band departments, for the purpose of establishing, modifying, and enforcing a child support obligation; and
 - (6) seek Court orders authorizing holds on Band members' monthly per capita (or other bonus) payments to facilitate either a determination of parentage or the administration of a child support obligation.
- (c) In providing child support enforcement services, the Band Authority may provide the services of an attorney or an attorney's representative to a party seeking to establish, modify or enforce a child support obligation.
 - (1) The provision of such services shall not create an attorney-client relationship between the attorney or attorney's representative and the party to whom such services are provided. Attorneys and attorney's representatives employed by or under contract with the Band Authority have an affirmative duty to inform applicants for and recipients of services from the Band Authority that no attorney-client relationship exists or will be formed between the attorney or attorney's representative and the applicant for or recipient of such services. In providing such services, the Band Authority shall be the sole client of the

attorney or attorney's representative and an attorney-client relationship shall exist between the attorney or attorney's representative and the Band Authority.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2004.

Band Ordinance 01-21.

§ 2005. Judicial Proceedings.

- (a) The Court shall have jurisdiction under this chapter over all parents and children subject to the jurisdiction of the Band. Except as otherwise provided by Federal law, such jurisdiction shall include, but not be limited to:
 - (1) all persons who are members of or are eligible for membership who reside within the Band's geographic limits,
 - (2) all persons who are alleged to be the parent of a child, including an unborn child, and whose parenting partner is a member of or is eligible for membership in the Band or is a member of or eligible for membership in another tribe and resides within the Band's geographic limits, and
 - (3) all persons who knowingly consent to the jurisdiction of the Band under this chapter.
- (b) Except as otherwise provided by Federal law, if another federal, state or tribal court has jurisdiction over any matter provided for in this chapter, the Band Court shall have concurrent jurisdiction over the same matter.
- (c) An action to establish, modify, or enforce a child support obligation may be filed separately or may be joined with an action for divorce, annulment, legal separation, or child custody or guardianship.
- (d) Unless an action to establish, modify, or enforce a child support obligation has been joined with an action for child custody or guardianship, in establishing, modifying, or enforcing a child support obligation, the Court shall not change or modify the custody or guardianship of the child.
- (e) Except as otherwise expressly provided in this chapter, in every action under this chapter:
 - (1) the Court shall inform the parties to the action that they have the right to have a lawyer or other person(s) they have selected represent them in the proceeding at their own expense;

- (2) if it appears that a party to the action cannot afford private counsel, the Court shall inform the party of available services that might provide counsel at a reduced fee or pro bono;
 - (3) the parties to the action shall have the opportunity to introduce, examine, and cross-examine witnesses in accordance with the Court's rules;
 - (4) the parties to the action shall have the opportunity to discover, offer, or inspect evidence in accordance with the Court's rules; and
 - (5) the parties to the action shall have the opportunity to present arguments and statements in accordance with the Court's rules.
- (f) All judicial proceedings in an action to establish, modify, or enforce a child support obligation are confidential. In accordance with this provision:
- (1) When providing service by publication in such an action, the names of the children subject to the action shall not be disclosed. Only the children's initials shall be used.
 - (2) Court files and hearings in such an action will be closed to outside observers. Only the parties directly involved, necessary witnesses, and Court personnel shall be present at hearings. The Court may utilize its discretion to permit other observers, provided that the Court has offered all parties the opportunity to object.
 - (3) Any person, including but not limited to any employee or official of the Band, who willfully discloses otherwise confidential information related to an action to establish, modify, or enforce a child support obligation, except as expressly authorized and provided for by Court order or otherwise pursuant to this chapter, and who is found guilty of an unauthorized disclosure of information, may be subject to a civil fine not to exceed Five Hundred Dollars (\$500.00).
- (g) Child support proceedings should not be discussed with the children involved or with other children in the household. Parents are to refrain from using their children as tools against each other.
- (h) If the Court has knowledge that a protective order exists with respect to a party involved in a child support proceeding, the Court shall not release any private data regarding the physical or employment location of the party protected by the protective order to the party or their representatives against whom the protective order was established. The Court may utilize its discretion to authorize separate proceedings to ensure the safety of the protected party while encouraging the utmost participation by the parties.
- (i) To ensure an equal distribution of child support amongst a supported child or children, the Court may schedule a hearing to address multiple child support orders

pertaining to the same child or children. The Court may utilize its discretion to determine how such a hearing will be structured.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 2.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2005.
Band Ordinance 01-21.

Cross References

Disclosure by judge of information relating to pending case, *see* 5 MLBS § 117.

§ 2006. Support Order.

- (a) **General.** Incorporation of support order in decree of dissolution, legal separation, or annulment; provision for child support in other proceedings. The Court shall incorporate in every decree of dissolution, legal separation, or annulment an order providing for the support of the parties' children as provided in this chapter. The Court shall also provide for the support of the parties' children in any other proceeding related to custody, parenting time, or support.
- (b) **Designation of support and maintenance payments.** Every support order incorporated in a decree of dissolution, legal separation, or annulment shall clearly designate whether payments ordered are for child support or for maintenance of the spouse or former spouse.
 - (1) If payments are ordered for child support and spousal maintenance, the order shall clearly state the amount that is for child support and the amount that is for spousal maintenance.
 - (2) An award of payments from future income or earnings of the parent who is the primary physical custodian of the child or children subject to the order is presumed to be for spousal maintenance, and an award of payments from the future income or earnings of the parent who is not the primary physical custodian of the child or children subject to the order is presumed to be for child support, unless otherwise designated by the Court.
- (c) **Marital misconduct not to affect support obligations.** The Court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.
- (d) **Stipulations for child support.** The Court shall approve a child support stipulation of the parties if each party is represented by independent counsel or if the Court makes a finding that the stipulation is fair to both parties and is in the best interest of

the child.

- (e) **Percentage payments.** The Court may order an obligor to pay child support in the form of a percentage of the obligor's net bonuses, commissions, or other forms of compensation, in addition to, or if the obligor receives no base pay, in lieu of, an order for a specific dollar amount.
- (f) **Lien on property; appointment of trustee.** With the exception of property held by the United States in trust for an obligor, the Court may make any support order a lien or charge upon the property of the obligor, either at the time of the entry of the order or by subsequent order upon proper application. In addition, the Court may appoint a trustee to receive funds or other property awarded as support money. When appropriate, the Court may name the Band Authority as trustee.
- (g) **Payments made to Band Authority or other public authority.** In any support order, the Court may require that child support payments be made to the Band Authority or other public authority for the benefit of the obligee.
- (h) **Seasonal income.** The Court shall establish the annual child support obligation of an obligor with a seasonal income so that the obligor makes either the same monthly payments throughout the year or monthly payments that reflect variations in the obligor's income.
- (i) **Duration of support payments.**
 - (1) Child support payments shall stop when the child is 18 years old unless the Court finds that:
 - (i) it would be in the best interests of the child to continue support payments until the child is 21 years old; and
 - (ii) the child is (i) disabled or (ii) between 18 and 21 years old and enrolled in high school on a full-time basis.
 - (2) If the Court makes such findings, it may order that support payments shall continue while the child is between 18 and 21 years old, but only for so long as the child is disabled or enrolled in high school on a full-time basis.
 - (3) When a child's full-time high school enrollment status is in dispute, the Court shall make the determination.
- (j) **Notice of address or residence change.** Every obligor under a support order shall notify the obligee and the public authority responsible for collection of support money, if any, of a change of address or residence within 60 calendar days of the address or residence change.

- (1) The Court may waive or modify the requirements of this paragraph by order if necessary to protect the obligee from contact by the obligor.
- (k) **Satisfaction of child support obligation.** The Court may conclude that an obligor has satisfied a child support obligation by providing a home, care, and support for the child while the child was living with the obligor, if the court finds that the child was integrated into the family of the obligor with the consent of the obligee and child support payments were not assigned to a public authority or other public agency.
- (l) **Other custodians.** If a child resides with a person other than a parent and the Court approves of the physical custody arrangement, the Court may order child support payments be made to the person having physical custody regardless of whether the person has legal custody. A duly executed Delegation of Parental Authority, on its own, does not establish physical custody.
- (m) **Adjustment to support order.** A support order issued under this section may provide that during any period of time of 30 consecutive days or longer that the child is residing with the obligor, the amount of support otherwise due under the order may be reduced.
- (n) **Determination of controlling order.** In situations in which more than one support order involving the same obligor and child exists, the obligor, the obligee, or the public authority responsible for collection of support money, if any, may request that the Court determine which order is the controlling order. The Court shall presume that the latest order that involves the same obligor and child is controlling in the absence of proof to the contrary.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 4.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2006.
Band Ordinance 01-21.

§ 2007. Providing Income Information.

- (a) In any proceeding for dissolution, legal separation, or annulment where the parties have joint children for whom a support order must be entered under this chapter, or in any other proceeding in which a support order may be entered under this chapter, the parties shall serve and file with their initial pleadings or motion documents a financial affidavit disclosing all sources of income for purposes of calculating gross income under § 2008 of this Title.
- (1) The financial affidavit shall include relevant supporting documentation necessary to calculate gross income and parental income for determining child

support including, but not limited to, pay stubs for the previous three months and employer statements or statements of receipts and expenses if self-employed. The supporting documentation shall also include relevant copies of each parent's most recent federal tax returns including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements, and all other documents evidencing earnings or income as received that provide verification for the financial affidavit, including verification of per capita income, if applicable.

- (b) In addition to the requirements of § 2007(a), at any time after a proceeding seeking child support payments has been commenced or when a child support order is in effect, a party to the proceeding, the obligor or obligee under the support order, or the Band Authority may request that a party to the proceeding or the obligor or the obligee under the support order produce a copy of the most recent federal tax returns filed with the Internal Revenue Service by the person to whom the request is directed.
 - (1) The person to whom the request is directed shall provide a copy of the tax returns to the person making the request within 30 calendar days of receipt of the request unless the request is not made in good faith. A request under this paragraph may not be made more than once every two years, in the absence of good cause for more frequent requests.
- (c) If a parent subject to the jurisdiction of the Court does not serve and file the financial affidavit and supporting documentation with the parent's initial pleading or motion documents, the Court shall set income for that parent based on credible evidence before the Court or in accordance with § 2011 of this Title. The Court may consider credible evidence from one party that the financial affidavit submitted by the other party is false or inaccurate.
- (d) If the Court determines that a party does not have access to documents that are required to be disclosed under this section, the Court may consider the testimony of that party as credible evidence of that party's income.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 4.01.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2007.
Band Ordinance 01-21.

§ 2008. Calculation of Gross Income.

- (a) Subject to the exclusions and deductions in this section, gross income includes any form of periodic payment to a parent including, but not limited to, salaries, wages, commissions, self-employment income as defined in § 2009 of this Title, workers' compensation, unemployment benefits, annuity payments, military and naval

retirement, pensions and disability payments, spousal maintenance payments pursuant to a court order entered in a prior proceeding or in the current proceeding, Social Security and veterans benefits, including Social Security and veterans benefits provided for a joint child to the extent specified in § 2010 of this Title, potential income as defined in § 2011 of this Title, and per capita payments authorized by a Tribal Net Revenue Allocation Plan.

- (1) Salaries, wages, commissions, or other compensation paid to a parent by third parties shall be included in gross income notwithstanding the parent's participation in an employer-sponsored benefit plan that allows the parent to pay for a benefit or expense using pretax dollars, such as flexible spending plans and health savings accounts.
 - (2) Pension deductions not exceeding ten percent of gross wages shall not be included in gross income.
- (b) A parent's gross income does not include compensation received by the parent for employment in excess of a 40-hour week, provided that:
- (1) Child support is ordered in an amount at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on gross income not excluded under this clause; and
 - (2) The parent demonstrates and the Court finds that:
 - (i) The excess employment began after the filing of the petition for dissolution, legal separation, or annulment or a petition related to custody, parenting time, or support;
 - (ii) The excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;
 - (iii) The excess employment is voluntary and not a condition of employment;
 - (iv) The excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of the hour; and
 - (v) The parent's compensation structure has not been changed for the purpose of affecting the parent's child support obligation.
- (c) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be included in the parent's gross income if they reduce the parent's personal living expenses.

- (d) A parent's gross income may be calculated either on an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying weekly income by 4.33.
- (e) A parent's gross income does not include child support payments received by the parent.
- (f) It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments, and foster care subsidies are not gross income. This presumption may be rebutted if such payments are used for the recipient's personal living or other expenses unrelated to the adoption, guardianship, or foster care.
- (g) A parent's gross income does not include the income of the parent's spouse.
- (h) Child support or spousal maintenance payments ordered by a court for a non-joint child or former spouse or ordered payable as part of the current proceeding shall be deducted from other periodic payments received by the parent making such payments for purposes of determining that parent's gross income.
- (i) A parent's gross income does not include public assistance benefits received under the TANF program, the Minnesota Family Investment Program, or other programs of public assistance based on need.
- (j) A parent's gross income does not include grants and/or scholarships for post-secondary education.
- (k) For purposes of calculating gross income of a third-party guardian or other custodial party who is not a biological parent, the Court shall not utilize the third-party guardian's income.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 4.03.
 Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2008.
 Band Ordinance 01-21.

§ 2009. Income from Self-Employment or Operation of a Business.

- (a) For purposes of this chapter, a parent's income from self-employment or operation of a business, including joint ownership of a partnership or closely held corporation, is defined as the parent's share of gross receipts minus the costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation.
- (b) The following items shall be excluded from ordinary and necessary expenses in calculating a parent's income from self-employment or operation of a business: amounts allowable by the Internal Revenue Service for the accelerated component of

depreciation expenses; investment tax credits; and any other business expenses determined by the Court to be inappropriate or excessive for determining gross income for purposes of calculating child support.

- (1) If challenged, the parent seeking to deduct an expense, including depreciation, has the burden of proving that the expense is ordinary and necessary.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I., § 4.02.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2009.

§ 2010. Social Security or Veterans' Benefit Payments Received on Behalf of a Child.

- (a) The amount of the monthly Social Security benefits or apportioned veterans' benefits provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based.
- (b) The amount of the monthly survivors' and dependents' educational assistance provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based.
- (c) If Social Security or apportioned veterans' benefits are provided for a joint child based on the eligibility of the obligor, and are received by the obligee as a representative payee for the child or by the child attending school, then the amount of the benefits shall be subtracted from the obligor's presumptive child support obligation as calculated under § 2013 of this Title.
- (d) If the survivors' and dependents' educational assistance is provided for a joint child based on the eligibility of the obligor, and is received by the obligee as a representative payee for the child or by the child attending school, then the amount of the assistance shall also be subtracted from the obligor's presumptive child support obligation as calculated under § 2013 of this Title.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I., § 5.01.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2010.

§ 2011. Potential Income.

- (a) **General.** This section applies to child support orders including orders for past

support. If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income.

- (1) For purposes of this determination, it is a rebuttable presumption that a parent can be gainfully employed on a full-time basis. As used in this section, “full time” means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom practice, or agreement use a normal work week of more or less than 40 hours in a week.
- (b) **Methods.** Determination of a parent’s potential income must be made according to one of the following two methods, as appropriate:
- (1) the parent’s probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings level in the community; or
 - (2) if the parent is receiving unemployment compensation or workers’ compensation, the parent’s income may be calculated using the actual amount of the unemployment compensation or workers’ compensation benefit received.
- (c) **Parent not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis.** A parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that:
- (1) the unemployment, underemployment, or employment on a less than full-time basis is temporary and will ultimately lead to an increase in income;
 - (2) the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of the parent’s diminished income on the child; or
 - (3) the unemployment, or underemployment, or employment on a less than full-time basis is because the parent is physically or mentally incapacitated or incarcerated, except where the reason for incarceration is the parent’s nonpayment of support.
- (d) **TANF Recipient.** If the parent of a joint child is a recipient of a TANF cash grant, no potential income is to be imputed to the parent.
- (e) **Caretaker.** If a parent stays at home to care for a child who is subject to the child support order, the Court shall consider the following factors when determining whether the parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis:

- (1) parenting and child care arrangements before the child support action;
- (2) the stay-at-home parent's employment history, recent employment earnings, and the availability of jobs within the community for an individual with that parent's qualifications;
- (3) the relationship between the employment-related expenses including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from available jobs within the community for an individual with that parent's qualifications;
- (4) the child's age and health including whether the child is physically or mentally disabled; and
- (5) the availability of child care providers.

This paragraph does not apply if the parent stays at home only to care for non-joint children.

- (f) **Economic Conditions.** A self-employed parent is not considered to be voluntarily unemployed, underemployed, or employed on a less than full-time basis if that parent can show that the parent's net self-employment income is lower because of economic conditions that are directly related to the source or sources of that parent's income.
- (g) **Per Capita Income.** If income is imputed to an obligor and the obligor received per capita income, the Court shall not include the per capita income as part of the obligor's gross income. This provision shall not prevent the Band Authority from intercepting per capita income in order to enforce any child support order.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, §§ 5.02 to 5.04.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2011.
Band Ordinance 01-21.

§ 2012. Deduction from Gross Income for Non-Joint Children.

- (a) When a parent is legally responsible for a non-joint child or children, a deduction from that parent's gross income shall be calculated under this section if:
 - (1) the non-joint child or children primarily resides in that parent's household;
and

- (2) that parent is not obligated to pay basic child support for the non-joint child or children to the other parent or a legal custodian of the non-joint child or children under an existing order.
- (b) The Court shall use the guideline under § 2014 of this Title to determine the basic child support obligation for the non-joint child or children by using the gross income of the parent for whom the deduction is being calculated. If the number of non-joint children to be used for the determination is greater than two, the determination must be made using the number two instead of the greater number.
- (c) The deduction from gross income for a non-joint child or children is 50 percent of the guideline amount determined under § 2012(b).

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.02.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2012.

§ 2013. Presumptive Child Support Obligation.

- (a) To determine the presumptive child support obligation of a parent, the Court shall follow the procedure set forth in this section.
- (b) To determine the obligor's basic support obligation, the Court shall:
 - (1) determine the gross income of each parent under § 2008 of this Title;
 - (2) calculate the parental income for determining child support (PICS) of each parent by subtracting from gross income the deduction, if any, for each parent's non-joint children under § 2012 of this Title;
 - (3) determine the percentage contribution of each parent to the combined PICS by dividing the combined PICS into each parent's PICS;
 - (4) determine the combined basic support obligation by application of the guideline in § 2014 of this Title;
 - (5) determine the obligor's share of the basic support obligation by multiplying the percentage figure from § 2013(b)(3) by the combined basic support obligation from § 2014(b)(4); and
 - (6) determine the parenting expense adjustment, if any, as provided in § 2016 of this Title and adjust the obligor's basic support obligation accordingly. If the parenting time of the parties is presumed equal, § 2016 (c) of this Title applies to the calculation of the basic support obligation and the determination of

which parent is the obligor.

- (c) The Court shall determine the obligor's child care support obligation as provided in § 2020 of this Title.
- (d) The Court shall determine each parent's medical support obligation as provided in § 2021 of this Title. Unreimbursed and uninsured medical expenses are not included in the presumptive amount of support owed by a parent and are calculated and collected as described in § 2021 of this Title.
- (e) Subject to the provisions of § 2013(f), the Court shall determine each parent's total presumptive child support obligation by adding together each parent's basic support, child care support, and medical support obligations as provided in this section.
- (f) If Social Security benefits or veterans' benefits are received by one parent as a representative payee for a joint child based on the other parent's eligibility, the other parent's presumptive child support obligation shall be reduced by the amount of such benefits in accordance with § 2010 of this Title.
- (g) A parent's actual child support obligation may be different than the parent's presumptive child support obligation under the circumstances described in § 2006 (d) of this Title, if the provisions in § 2022 of this Title are applicable, or as a result of the Court's consideration of the factors identified in § 2023 of this Title.
- (h) A final child support order shall separately designate the amount owed for basic support, child care support, and medical support.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.06.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2013.

§ 2014. Guideline Used in Child Support Determinations.

- (a) **Use of guideline.**
 - (1) The guideline in this section establishes a rebuttable presumption of the appropriate level of basic support for a joint child and shall be used in any judicial or administrative proceeding to establish or modify a support obligation under this chapter. The actual level of basic support for a joint child may deviate from the guideline level in accordance with other provisions of this chapter.
 - (2) The presumptive basic support obligation for a joint child shall be determined by referencing the guideline for the appropriate number of joint children and

the combined parental income for determining child support of the parents.

- (3) If a joint child is not in the custody of either parent and a support order is sought against one or both parents, the basic support obligation shall be determined separately for each parent against whom a support order is sought by referencing the guideline for the appropriate number of joint children and that parent's individual parental income for determining child support, not the combined parental incomes for determining child support of both parents.
- (b) **Basic support; guideline.** Unless otherwise agreed to by the parents and approved by the Court when establishing basic support, the Court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly parental income for determining child support (PICS). The presumptive level of basic support must be computed in accordance with MINN. STAT. § 518A.35, or other Minnesota child support statute, subject to any contrary Mille Lacs Band law.
- (c) **More than six children.** If a child support proceeding involves more than six children, the Court may derive a support order without specifically following § 2014(b). However, the Court must consider the basic principles encompassed by the guideline and both parents' needs, resources, and circumstances.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.07.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2014.
Band Ordinance 01-21.

§ 2015. Non-Cash Support.

An obligor's provision of non-cash support may satisfy up to 50 percent of the obligor's child support obligation, but only under the following circumstances:

- (a) The obligor and obligee agree to the type of non-cash support that will be provided and the extent to which it will satisfy the obligor's child support obligation;
- (b) The Court approves the provision of non-cash support in a written order that:
 - (1) states the specific dollar amount of the obligor's total child support obligation;
 - (2) describes the type(s) of non-cash support that will be provided;
 - (3) states that no more than 50% of the obligor's total child support obligation may be satisfied by the provision of such non-cash support; and

- (4) provides that the non-cash support shall not satisfy any portion of the obligor’s child support obligation that has been or in the future is assigned to a public authority or other public agency.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2015.

§ 2016. Parenting Expense Adjustment.

- (a) **General.** The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs cost of caring for the child, including, but not limited to, costs of food, transportation, recreation, and household expenses.
 - (1) Every child support order shall specify that the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time or is otherwise designated. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods or separate days where the child is in the parent’s physical custody and under the direct care of the parent but does not stay overnight. The Court may consider the age of the child in determining whether a child is with a parent for a significant period of time.
 - (2) If there is no court order awarding parenting time, the Court shall determine the child support award without consideration of the parenting expense adjustment.

If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment.

- (b) Calculation of parenting expense adjustment. The obligor is entitled to a parenting expense adjustment calculated as provided in this paragraph. The Court shall:
 - (1) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor as follows:

Percentage Range of Parenting Time	Adjustment Percentage
Less than 10 percent	No adjustment
10 percent to 45 percent	12 percent
45.1 percent to 50 percent	Presume parenting time is equal

- (2) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting expense adjustment; and
 - (3) subtract the parenting expense adjustment from the obligor's basic child support obligation. The result is the obligor's basic support obligation after the parenting expense adjustment.
- (c) Calculation of basic support when parenting time is presumed equal.
- (1) If the parenting time is presumed equal under § 2016(b) and the parental incomes for determining child support of the parents also are equal, no basic support shall be required unless the Court determines that the expenses for the child are not equally shared.
 - (2) If the parenting time is equal but the parents' incomes for determining child support are not equal, the parent having the greater parental income for determining child support shall be obligated for basic support calculated as follows:
 - (i) Multiply the combined basic support calculated under § 2014 of this Title by 0.75;
 - (ii) Prorate the amount under § 2016(c)(2)(i) between the parents based on each parent's proportionate share of the combined PICS; and
 - (iii) Subtract the lower amount from the higher amount. The resulting figure is the basic support obligation after the parenting expense adjustment for the parent with the greater parental income for determining child support.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 6.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2016.

§ 2017. Written Findings.

- (a) **No deviation.** If the Court does not deviate from the presumptive child support obligation under § 2013 of this Title, the Court must make written findings that state:
 - (1) Each parent's gross income;
 - (2) Each parent's PICS; and

- (3) Any other significant evidentiary factors affecting the child support determination.
- (b) **Deviation.** If the Court deviates from the presumptive child support obligation under § 2013 of this Title, the Court must make written findings that state:
- (1) Each parent’s gross income;
 - (2) Each parent’s PICS;
 - (3) The amount of the presumptive child support obligation calculated under § 2013 of this Title;
 - (4) The reasons for the deviation; and
 - (5) How the deviation serves the best interests of the child.
- (c) **Written findings required in every case.** The provisions of this section apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The Court must review any stipulations presented to it for conformity with § 2013 of this Title. The Court is not required to conduct a hearing, but the parties must provide sufficient documentation to verify the child support determination and to justify any deviation.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 6.91.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2017.

§ 2018. Equitable Distribution of Child Support.

Where practical, the Court should seek to establish child support orders that equally apportion child support to all of the children of an obligor.

- (a) **One Order.** Where multiple joint children are supported by one child support order, the Court may order support on a per-child basis.
- (b) **Multiple Orders.** Where an obligor owes child support to separate obligees, the Court may equitably apportion child support by determining the maximum child support amount that the obligor is able to pay and thereafter ensuring that each child is supported equally to the maximum extent possible.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.071.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2018.
Band Ordinance 01-21.

§ 2019. Modification of Orders or Decrees.

- (a) **Authority.** After entry of a temporary or permanent support order under this subchapter, on motion of either of the parents, a copy of which must be served on a public authority of payments are made through it, or on motion of a public authority, the Court may, from time to time, modify any term or condition of the order or make a new order respecting any matter which it might have made in the original proceeding, to the extent and under the circumstances described in this section.
- (1) A parent or a public authority may also bring a motion for contempt of court if the obligor is in arrears in support payments.
- (b) **Modification.**
- (1) The terms of an existing support order may be modified or a new order may be made upon a showing that there has been a substantial change in circumstances from those prevailing when the existing order was entered and that one or more of the terms of the existing order is unreasonable and unfair under the new circumstances.
- (2) Any one or more of the following facts is sufficient to establish that there has been a substantial change in circumstances from those prevailing when the existing order was entered:
- (i) substantially increased or decreased gross income of an obligor or obligee;
 - (ii) substantially increased or decreased need of an obligor or obligee of the child or children that are subject to the proceedings;
 - (iii) receipt of assistance under the TANF program;
 - (iv) a change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics;
 - (v) extraordinary medical expenses of the child not provided for under § 2021 of this Title;
 - (vi) a change in the availability of appropriate health care coverage or a

- substantial increase or decrease in health care coverage costs;
- (vii) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses; or
 - (viii) the emancipation of the child.
- (3) Any one or more of the following facts is sufficient to create a rebuttable presumption that the terms of the existing support order are unreasonable and unfair under the new circumstances:
- (i) the application of the child support guideline in § 2014 of this Title to the current circumstances of the parties results in a calculated basic support obligation that is at least 20 percent and at least \$75.00 per month higher or lower than that provided in the existing support order or, if the basic support obligation under the existing support order is less than \$75.00, it results in a calculated basic support obligation that is at least 20 percent higher or lower;
 - (ii) the medical support provisions of the order established under § 2021 of this Title are not enforceable by a public authority or the obligee;
 - (iii) health coverage ordered under § 2021 of this Title is not available to the child for whom the order is established by the parent ordered to provide such coverage;
 - (iv) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount;
 - (v) the gross income of an obligor or obligee has decreased by 20 percent through no fault or choice of the party; or
 - (vi) a deviation from the child support guideline was granted based on the factor identified in § 2023 (a)(4) of this Title and the child no longer resides in a foreign country or the factor is otherwise no longer applicable.
- (4) By itself, the fact that an obligor or obligee has become responsible for the support of an additional non-joint child since the entry of an existing support order is not a substantial change in circumstances from those prevailing when the existing order was entered and does not create a rebuttable presumption that the terms of the existing order are unreasonable and unfair. However, § 2012 of this Title shall be considered if there are other grounds which allow a modification of the existing order.

- (5) If an obligor is receiving per capita income, incarceration and corresponding inability to earn an income shall not serve as a basis for modification of a child support order.
- (6) On a motion for modification of support, the Court:
 - (i) shall apply §§ 2013 and 2014 of this Title, and shall not consider the financial circumstances of either parent's spouse, if any; and
 - (ii) shall not consider compensation received by a parent for employment in excess of a 40-hour week if the parent demonstrates, and the Court finds, that:
 - (A) the excess employment began after entry of the existing support order;
 - (B) the excess employment is voluntary and not a condition of employment;
 - (C) the excess employment is in the nature of additional, part-time employment, or overtime employment compensable by the hour or fractions of an hour;
 - (D) the parent's compensation structure has not been changed for the purpose of affecting a support obligation; and
 - (E) in the case of an obligor, existing child support payments are at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on income not excluded under this subparagraph;

provided that, in the case of an obligor who is in arrears in child support payments to the obligee, any net income from excess employment must be used to pay the arrearages until the arrearages are paid in full.

- (7) A modification of support may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the Band Authority or other public authority if public assistance is being furnished.
- (8) Subject to the requirements of § 2017 of this Title, the Court need not hold an evidentiary hearing on a motion for modification of support if both parents agree to modify the child support award and submit an Agreed Order to the Court for approval.
- (9) An enactment, amendment, or repeal of law does not constitute a substantial

change in the circumstances for purposes of modifying a child support order except as expressly provided in such enactment, amendment, or repeal.

- (10) In the event that a single obligor owes child support to separate obligees, the Band Authority may move the Court to simultaneously modify all of the obligor's child support orders within the Court's jurisdiction in order to equally distribute the support amount amongst all of the children.
- (c) **Child Support on Death of Obligor.** Unless otherwise agreed in writing or expressly provided in a support order, provisions for the support of a child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate under the circumstances.
- (d) **Child Support on Death of Obligee.** When a custodial party receiving arrears payments becomes deceased, the Court shall make a determination as to whether the arrears should be expunged or whether the payments should continue and the Band Authority should be appointed as a trustee to disburse ongoing arrears payments to the child(ren), regardless of whether the child(ren) have reached the age of majority.
 - (1) If children receiving arrears payments have reached the age of majority, the children may become a party to the child support matter and may motion the Court for forgiveness of the obligor's arrears.
 - (2) If the Band Authority is appointed as a trustee, the Court may require regular reports on how the arrears payments have been disbursed.
- (e) **Automatic Termination of Support.**
 - (1) Unless a support order provides otherwise, a child support obligation that specifies a specific amount for a specific child terminates with respect to that child automatically and without any action by the obligor to reduce, modify, or terminate the order when the requirements of § 2006(i) of this Title have been met.
 - (2) Unless a support order provides otherwise, a child support obligation for two or more children that is not based on and does not otherwise specify a specific amount for each child continues in the full amount until all of the children for whose benefit the order was made are 18 years old unless modified by the Court. The obligor may request modification of the child support obligation under such an order when one or more of the children become 18 years old. Upon such request, the Court shall determine the new child support obligation under all applicable provisions of this subchapter on the basis of the income of the parties at the time the modification is sought.
- (f) **Form.** The Band Authority shall prepare and make available to Court administrators,

obligors, and persons to whom child support is owed a form to be submitted by the obligor or the person to whom child support is owed in support of a motion for modification of an order for support or for contempt of court.

- (g) **Child Care Exception.** Child care support must be based on actual child care expenses. The Court may provide that a decrease in the amount of child care support based on a decrease in actual child care expenses is effective as of the date the expense is decreased.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. I, §§ 5.05, 5.08, Title II, §§ 1, 2.05.
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2019.
Band Ordinance 01-21.

§ 2020. Child Care Support.

- (a) **Child Care Costs.** Unless otherwise agreed by the parents and approved by the Court, the Court must order that work-related or education-related child care costs of joint children be divided between the obligor and obligee based on their proportionate share of the parents' combined monthly PICS.
 - (1) The amount of work-related or education-related child care costs required by this section to be divided between the obligor and obligee is the total amount received by the child care provider from the obligee and any public agency for the joint child or children.
 - (2) Child care costs shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of the joint child.
- (b) **Determining Costs.**
 - (1) The Court must require verification of employment or school attendance and documentation of child care expenses from the obligee and the public authority, if applicable.
 - (2) If child care expenses fluctuate during the year because of the obligee's seasonable employment or school attendance, or because the obligor has extended periods of parenting time with the child or children, the Court must determine child care expenses based on an average monthly cost.
 - (3) The amount allocated for child care expenses is considered child support but is not subject to a cost of living adjustment under § 2019 of this Title.
 - (4) The Court may allow the additional parenting time to a parent with whom a

joint child does not reside to care for the joint child while the parent with whom the joint child does reside is working or attending school, if the Court determines this arrangement is reasonable and in the best interests of the child. In making this determination, the Court shall consider:

- (i) the ability of the parents to cooperate;
- (ii) methods for resolving disputes regarding the care of the child, and the parents' willingness to use those methods; and
- (iii) whether domestic abuse has occurred between the parties.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, Title II, § 2.04.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2020.

§ 2021. Medical Support.

(a) **Medical support order.**

- (1) A completed national medical support notice issued by the Band Authority or a Court order that complies with this section is a qualified medical child support order under the Federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1169(a).
- (2) Every order addressing child support must state:
 - (i) The names, last-known addresses, and Social Security numbers of the parents and the joint child that is subject of the order unless the Court prohibits the inclusion of an address or Social Security number and orders the parents to provide the address and Social Security number to the administrator of the health plan providing health care benefits for the joint child.
 - (ii) If a joint child does not presently have appropriate health care coverage, whether appropriate health care for the joint child is available and, if so:
 - (A) The parents' responsibilities for carrying health care coverage;
 - (B) The cost of premiums and how the cost is allocated between the parents; and
 - (C) The circumstances, if any, under which an obligation to

provide health care coverage for the joint child will shift from one parent to the other.

- (iii) If appropriate health care coverage is not available for the joint child, whether a contribution for medical support is required; and
- (iv) How unreimbursed or uninsured medical expenses will be allocated between the parents.

(b) **Determining appropriate health care coverage.** In determining whether a parent has appropriate health care coverage for a joint child, the Court must consider the following factors:

- (1) Comprehensiveness of health care coverage providing medical and dental benefits, as well as benefits pertaining to the child's vision.
 - (i) Dependent health care coverage providing medical benefits is presumed comprehensive if it includes medical, dental, and hospital coverage and provides for preventive, emergency, acute, and chronic care.
 - (ii) If both parents have dependent health care coverage providing medical and dental benefits that is presumed comprehensive under this subparagraph, the Court must determine which parent's coverage is more comprehensive by considering what other benefits are included in the coverage.
- (2) Accessibility.
 - (i) Dependent health care coverage is accessible if the covered joint child can obtain services from a health plan provider with reasonable effort by the parent with whom the joint child resides. Health care coverage is presumed accessible if:
 - (A) Primary care is available within 30 miles of the joint child's residence and specialty care is available within 60 miles of the joint child's residence;
 - (B) The health care coverage is available through an employer and the employee can be expected to remain employed for a reasonable amount of time; and
 - (C) No pre-existing conditions exist to unduly delay enrollment in health care coverage.

- (3) The joint child's special medical needs.
- (4) Affordability.
 - (i) Dependent health care coverage is affordable if it is reasonable in cost.
 - (ii) If both parents have dependent health care coverage available for a joint child that is comparable with regard to comprehensiveness of medical and dental benefits, accessibility, and the joint child's special needs, the least costly health care coverage is presumed to be the most appropriate health care coverage for the joint child.

(c) **Ordering Health Care Coverage.**

- (1) If a joint child is presently enrolled in a health care plan or plans providing medical and dental benefits, the Court must order that the parent who currently has the joint child enrolled continue that enrollment unless the parents agree otherwise or a parent requests a change in health care coverage and the Court determines that other health care coverage is more appropriate.
- (2) If a joint child is not presently enrolled in a health care plan or plans providing medical and dental benefits, upon motion of a parent or the Band Authority, the Court must determine whether appropriate health care coverage providing medical and dental benefits for the joint child is available to one or both parents.
- (3) If appropriate health care coverage providing medical and dental benefits to the joint child is only available to one parent, the Court must order that parent to carry the coverage for the joint child.
- (4) If appropriate health care coverage providing medical and dental benefits to the joint child is available to both parents, the Court must order the parent with whom the joint child resides to carry the coverage for the joint child, unless:
 - (i) A parent expresses a preference for health care coverage providing medical and dental benefits to the joint child that is available to the parent with whom the joint child does not reside;
 - (ii) The parent with whom the joint child does reside is already carrying dependent health care coverage providing medical and dental benefits for other children and the cost of contributing to the premiums of the other parent's coverage would cause the parent with whom the joint child does not reside extreme hardship; or
 - (iii) The parents agree as to which parent will carry health care coverage

providing medical and dental benefits to the joint child and agree on the allocation of costs.

- (5) If the exception in § 2021(c)(4)(i) or (ii) applies, the Court must determine to which parent the most appropriate health care coverage providing medical and dental benefits to the joint child is available and order that parent to carry health care coverage for the joint child.
- (6) If appropriate health care coverage providing medical and dental benefits to the joint child is not available to either parent, the Court must order the parents to contribute toward the actual health care costs of the joint child based on a pro rata share, unless § 2021(c)(7) shall apply.
- (7) If the joint child is receiving any form of public coverage, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of public coverage.
 - (i) The amount of the noncustodial parent's contribution is determined by applying the noncustodial parent's PICS to the premium schedule for public coverage. If the noncustodial parent's PICS meets the eligibility requirements for public coverage, the contribution is the amount of the premium for the highest eligible income on the appropriate premium schedule for public coverage. For purposes of determining the premium amount, the noncustodial parent's household size is equal to one parent plus the number of children who are the subject of the child support order.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2021.
Band Ordinance 01-21.

§ 2022. Ability to Pay; Self-Support Adjustment.

(a) **Ability to pay.**

- (1) It is a rebuttable presumption that a child support obligation should not exceed the obligor's ability to pay. To determine the amount of child support the obligor has the ability to pay, the Court shall follow the procedure set out in this section.
- (2) The obligor's income available for support is the obligor's monthly gross income minus a monthly self-support reserve equal to 120 percent of the federal poverty guidelines for one person. If the obligor's income available for

support is equal to or greater than the obligor's child support obligation calculated under §§ 2013 and 2023 of this Title, the Court shall order child support under §§ 2013 and 2023.

- (3) If the obligor's income available for support is more than the minimum support amount under § 2022(b), but less than the amount calculated under §§ 2013 and 2023 of this Title, the Court shall reduce the child support obligation calculated under § 2013 in the following order, until the child support obligation is equal to the obligor's income available for support:
 - (i) Medical support obligations;
 - (ii) Child care support obligation; and
 - (iii) Basic support obligation.
- (4) If the obligor's income available for support is equal to or less than the minimum support amount under § 2022 (b) or if the obligor's gross income is less than 120 percent of the federal poverty guidelines for one person, the Court shall order child support in the minimum support amount under § 2022(b).
- (5) If the obligor receives no income and completely lacks the ability to earn income, the Court shall not order child support.
- (6) This section does not apply to an obligor who is incarcerated. The Court shall not reduce the child support obligation of an obligor who is incarcerated under this section.

(b) **Minimum support amount.**

- (1) The minimum support amount is:
 - (i) For one or two children, \$50 per month;
 - (ii) For three or four children, \$75 per month; and
 - (iii) For five or more children, \$100 per month.
- (2) If the Court orders the obligor to pay the minimum support amount under this paragraph, the obligor is presumed unable to pay child care support and medical support.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2022.

§ 2023. Deviation from Presumptive Child Support Obligation.

- (a) **General factors.** The Court must take into account the factors listed in this section in establishing or modifying a child support obligation. These factors are in addition to the child support guideline in § 2014 of this Title and the other factors used to calculate the presumptive child support obligation under § 2013 of this Title. On the basis of the factors listed in this section, the Court may deviate upward or downward from the presumptive child support obligation. The Court may deviate from the presumptive child support obligation in order to encourage prompt and regular payment of child support, to prevent either parent or the joint child or children from living in poverty, or for other purposes. Among the factors to be considered are the following:
- (1) All earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of § 2008 (b) of this Title;
 - (2) The extraordinary financial needs and resources, physical and emotional conditions, and educational needs of the child to be supported;
 - (3) The standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;
 - (4) Whether the child resides in a foreign country or more than one year that has a substantially higher or lower cost of living than this country;
 - (5) Which parent is entitled to claim the child as a dependent for income tax purposes and the financial benefit that parent receives from claiming the child as a dependent;
 - (6) The parents' debts as provided in §2023(b);
 - (7) The obligor affirmatively demonstrates having made significant contributions toward the support of the child that have not otherwise been quantified or considered; and
 - (8) Whether the obligor's total payments for court-ordered child support exceed the limitations set forth in 24 MLBS §3353.
- (b) **Debt owed to private creditors.**
- (1) In establishing or modifying a support obligation, the Court may consider debts owed to private creditors, but only if:
 - (i) The right to support has not been assigned.

- (ii) The Court determines that the debt was reasonably incurred for necessary support of the child or parent or for the necessary generation of income.
 - (A) If the debt was incurred for the necessary generation of income, the Court may consider only the amount of debt that is essential to the continuing generation of income; and
 - (iii) The parent requesting a deviation from the presumptive child support obligation produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the original debt amount, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.
- (2) A schedule prepared under § 2023(b)(1)(iii) must contain a statement that the debt will be fully paid after the number of months shown in the schedule, barring emergencies beyond the parent's control.
 - (3) Any deviation below the presumptive child support obligation that is based on a consideration of debts owed to private creditors must not exceed 18 months in duration. After 18 months the support obligation must increase automatically to the level determined by the Court without consideration of such debts. In addition, the Court may order one or more step increases in the support obligation during the 18-month period to reflect debt retirement.
 - (4) If payment of debt is ordered pursuant to this section, the payment must be ordered to be in the nature of child support.
- (c) **Evidence.** The Court may receive evidence on the factors in this section to determine if the presumptive child support obligation should be modified in a particular case.
 - (d) **Payments assigned to a public authority.** If the child support payments are assigned to a public authority or other public agency under MINN. STAT. §256.741, the Court may not deviate downward from the presumptive child support obligation unless the Court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor.
 - (e) **Joint legal custody.** An award of joint legal custody is not a reason for deviation from the presumptive child support obligation.
 - (f) **Self-support limitation.** If the obligor establishes that, after payment of income and payroll taxes, their monthly income is less than the monthly self-support reserve described in § 2022(a)(2) of this Title, the Court may provide for a downward deviation from the presumptive child support obligation.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2023.
Band Ordinance 01-21.

§ 2024. Notice to Band Authority.

The petitioner shall notify the Band Authority of all proceedings for dissolution, legal separation, annulment, determination of parentage, or the custody of a child if either parent is receiving public assistance or applies for it subsequent to the commencement of the proceeding. The notice must contain the full names of the parties to the proceeding and their birth dates.

Historical and Statutory Notes

Source:

Ordinance 06-10, Title I, § 1, Exhibit A, § 2024.

SUBCHAPTER 2

PATERNITY

Section

- 2031. Purpose.**
- 2032. Paternity Proceedings Generally.**
- 2033. [Reserved].**
- 2034. Establishing Paternity Through Court Order.**
- 2035. Establishing Paternity by Acknowledgment.**
- 2036. Paternity Established by Other Jurisdiction.**

§ 2031. Purpose.

The purpose of this subchapter is to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote, and help provide for the child's best interests. This shall include—but not be limited to—the health, education, and support of the child; the child's receipt of survivorship, inheritance, and Social Security benefits; and the transmission of the customs and traditions of the Band to the child.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2031.
Band Ordinance 01-21.

§ 2032. Paternity Proceedings Generally.

- (a) This subchapter provides for the establishment of paternity through court order and by acknowledgment. Establishment of paternity by court order is generally a contested process but may also be used if an alleged father is deceased or otherwise unavailable. Establishment of paternity by acknowledgment is an uncontested process allowing a father to swear under oath that he is the biological parent of a child.
- (b) An unwed father is not entitled to treatment as a parent under this Title unless his name appears on the child's birth certificate or unless his paternity is established or acknowledged as provided in this subchapter.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2032.

§ 2033. [Reserved].

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2033.

§ 2034. Establishing Paternity Through Court Order.

- (a) **Who may file.** A child, a child's legal guardian, a child's biological mother, an alleged father of a child, or the Band Authority may file a petition requesting the Court to establish paternity. The biological mother and an alleged father may file jointly.
- (b) **Petition.**
 - (1) A petition to establish paternity shall include the following:
 - (i) The names, dates of birth, addresses, and tribal affiliations, if any, of the biological mother, the alleged father(s), the child, and all others who have legal rights of custody, visitation, or support of the child;
 - (ii) A short statement alleging facts to establish a reasonable possibility of the requisite sexual contact between the biological mother and alleged father;
 - (iii) The marital status of the biological mother and the alleged father(s);

- (iv) The consent, if any, of the biological mother and the alleged father to establish the alleged father as the biological father of the child;
 - (v) Whether any party has filed an action to determine paternity in any other court or with any agency and, if so, whether a judgment or other determination of paternity has been rendered by any other court or agency;
 - (vi) A copy of the child's certified birth certificate attached as a supporting document; and
 - (vii) The notarized signature of the petitioner verifying the truth of the information in the Petition.
- (2) In a case where domestic violence has been an issue, an address is not required for the aggrieved party.
- (c) **Notice.** All parties, including the biological mother and each man alleged to be the biological father, shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard. The party required to provide notice shall do so in compliance with the notice requirements found in the Federal Rules of Civil Procedure.
- (d) **Summons.** The summons to be served on the alleged father(s) along with the Petition shall include the following notice, in addition to providing a time and date for appearance:

NOTICE TO RESPONDENT:

- (1) You have been named in a petition alleging paternity. A judgment of paternity would legally designate the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support until the child reaches the age of eighteen (18), or, if the child is disabled or is attending high school on a full-time basis and the Court so orders, until the child reaches the age of twenty-one (21), and make your failure to pay child support punishable by contempt of court.
- (2) You may request genetic tests which will indicate the probability that you are or are not the father of the child. The Court will order genetic tests on request by you, the Band Authority, or any other party. Any person who refuses to take court-ordered genetic tests may be punished for contempt of court.
- (3) The petitioner has the burden of proving by a preponderance of the evidence that you are the father. If a genetic test shows that you are not excluded as the father and that the statistical probability of your being the father is ninety-two percent (92%) or higher, you are presumed to be the father.

- (4) The following defenses are available to you:
 - (i) That you were sterile or impotent at the time of conception;
 - (ii) That you did not have sexual intercourse with the mother of the child during the conception period; or
 - (iii) That another man did have intercourse with the mother of the child during the conception period.
 - (5) If you fail to appear at any state of the proceedings, including a scheduled genetic test, the Court may enter a default judgment finding you to be the father. A default judgment will take effect twenty-eight (28) days after it is served on or mailed to you, unless within those twenty-eight (28) days you present yourself to the Court and establish good cause for your failure to appear and present yourself for the genetic test. The Court's entry of a default judgment does not make a child eligible for enrollment in the Mille Lacs Band of Ojibwe.
- (e) **Hearing.** The following rules apply to paternity hearings:
- (1) The mother of the child and the alleged father(s) may be compelled to testify at the hearing.
 - (2) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
 - (3) The hearing shall be conducted by the judge with no jury.
 - (4) Paternity hearings will be closed to outside observers. Only the parties directly involved, necessary witnesses, and Court personnel shall be present at hearings. The Court may utilize its discretion to permit other observers, provided that the Court has offered all parties the opportunity to object.
- (f) **Genetic Tests.**
- (1) If the alleged father(s) is alive and available, the Court may require the child, mother, and alleged father(s) to submit to genetic tests, unless the Court determines it would not be in the best interest of the child in accordance with § 2034(i) of this Title.
 - (2) An alleged father may be excused from the requirement to submit to a genetic test if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.

- (3) If genetic testing is required by the Court, such testing shall be performed by an expert in paternity genetic testing approved by the Court.
 - (i) If such test confirms parentage, the disputing parent shall pay the cost of testing. If the test disproves parentage, the petitioner shall pay the cost of testing.
 - (ii) The Band Authority shall not be required to pay for any genetic testing ordered by the Court in a non-child support matter.
 - (4) The Court may order additional genetic tests by other experts qualified in paternity genetic testing upon reasonable request of a party, at that party's expense.
- (g) **Evidence.** The Court may consider the following types of evidence in paternity cases:
- (1) Genetic test results, including the impossibility or the statistical probability of an alleged father's paternity, presented by either expert testimony or a written report accompanied by an affidavit. The following types of genetic tests are admissible as evidence of paternity provided that the results of all tests, when taken together, either exclude an alleged father or yield a statistical probability of at least ninety-two percent (92%) that the alleged father is the biological father: DNA, HLA (Human Leukocyte Antigens), red blood cell enzyme, red blood antigen, and serum protein tests;
 - (2) Evidence of sexual intercourse between the mother and the alleged father(s) at any possible time of conception;
 - (3) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy;
 - (4) Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Court and performed by experts;
 - (5) Cultural evidence, a reputation in the community as to paternity, or both; or
 - (6) Any other reliable evidence which is relevant to the issue of paternity of the child.
- (h) **Presumption of Paternity.** A man is presumed to be the biological father of a child if he and the biological mother were married at the time of the child's birth or if the child was born within three hundred (300) days after the marriage was terminated. The presumption can only be overcome by genetic testing proving another man is the father by a statistical probability of ninety-two percent (92%).

- (i) **Best Interest of the Child Not to Establish Paternity.** The Court may determine that it is not in the best interest of the child to establish paternity if:
 - (1) The child was conceived as a result of rape, incest, sexual abuse of a minor, or sexual assault;
 - (2) A legal proceeding for adoption is pending before a court of competent jurisdiction; or
 - (3) The cooperation of the child's custodian in the establishment of paternity is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.

- (j) **Judgment of Paternity After Failure to Appear.** If the respondent is the alleged father and fails to appear for a Court proceeding or for a genetic or other test at any time not waived by the Court, the Court may, if no good cause to the contrary exists, enter an order that the respondent is the father, which shall be served on respondent personally, or by registered or certified mail to his last known address, or by publication if the respondent's address is not known.
 - (1) Such order shall take effect twenty-eight (28) days after service unless, within that time, the respondent presents to the Court evidence of good cause for his failure to appear at the proceeding or to undergo the genetic or other test.
 - (2) No default order shall be entered by the Court unless the respondent was properly served with notice of the proceeding or test at which he failed to appear in accordance with § 2034(c) and (d) and the Federal Rules of Civil Procedure.

- (k) **Judgment of Paternity.** The judgment or order of the Court determining the existence or nonexistence of paternity shall be based on a preponderance of the evidence and shall be final subject only to an appeal to the Band's Court of Appeals.
 - (1) If the judgment or order of the Court is different from the child's birth certificate, the Band Authority shall send the order to the Department of Vital Statistics of the state in which the child was born. The Court shall order the child's parents to reimburse the Band Authority for any associated expenses.

- (l) **Reopening Default Judgment of Paternity.** A default judgment declaring a person to be the father of a child may be reopened upon petition for good cause shown within ninety-one (91) calendar days of the default judgment.

- (m) **Time for Filing Paternity Action.** A petition to determine paternity may be filed at any time for the purpose of establishing the existence of a father and child relationship. If a petition to determine paternity is brought before the birth of the child, no hearing or other proceeding shall be conducted until after the birth unless

the court shall determine that an action is necessary in order to preserve testimony.

- (n) **Hearing Closed, Records Sealed.** Paternity proceedings shall be closed and all records shall be sealed except as ordered by the Court for the purpose of requesting an amended birth certificate, or for any purpose consistent with the best interest of the child.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2034.
Band Ordinance 01-21.

§ 2035. Establishing Paternity by Acknowledgment.

- (a) **Request for recognition.** The mother and alleged father of a child born to a mother who was not married to the child's alleged father nor to any other man when the child was conceived nor when the child was born may, in a writing signed by both of them before a notary public and filed with the Court, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents.
 - (1) The recognition must be on the form prepared by the Band Authority under § 2035(f), except that it may also include the joinder in recognition provisions under § 2035(b). The requirement that the mother not be married when the child was conceived nor when the child was born does not apply if her husband or former husband joins in the recognition under § 2035(b).
- (b) **Joinder in recognition by husband.** A man who is a presumed father under § 2034(h) of this Title may join in a recognition of parentage that recognizes that another man is the child's biological father.
 - (1) The man who is the presumed father under § 2034(h) must sign an acknowledgment under oath before a notary public that he is renouncing the presumption under § 2034(h) and recognizing that the father who is executing the recognition under this section is the biological father of the child.
 - (2) A joinder in a recognition under this paragraph must be executed within one year after the child's birth and the joinder must be filed with the Court.
 - (i) The joinder must be on a form prepared by the Band Authority.
 - (ii) Failure to properly execute a joinder in a recognition does not affect the validity of the recognition under this section.

- (iii) A joinder without a corresponding recognition of parentage has no legal effect.
- (c) **Revocation of recognition.** A recognition may be revoked in a writing signed by the mother or father before a notary public and filed with the Court within sixty (60) calendar days after the recognition is executed or the date of a hearing in an action relating to the child in which the revoking party is a party.
 - (1) A joinder in a recognition may be revoked in a writing signed by the person who executed the joinder and filed with the Court within sixty (60) calendar days after the joinder is executed.
 - (2) Upon receipt of a timely revocation of the recognition of parentage or joinder in a recognition, the Court shall forward a copy of the revocation to the non-revoking parent, or, in the case of a joinder in a recognition, to the mother and father who executed the recognition, and the recognition shall have no further force or effect.
- (d) **Effect of recognition.** Once a recognition has been properly executed and filed with the Court in accordance with § 2035(a), if there are no competing presumptions of paternity under § 2034(h) of this Title or if any such presumption has been renounced under § 2035(b), and if neither the recognition nor the joinder in recognition, if any, has been revoked under § 2035(c) and no other recognition has been filed for the same child, the recognition:
 - (1) has the force and effect of a judgment or order determining the existence of the parent-child relationship, is determinative for all purposes related to the existence of the parent and child relationship, and is entitled to full faith and credit in other jurisdictions;
 - (2) precludes any further action to determine parentage regarding the signatory of the recognition, except as provided in § 2035(e); and
 - (3) is a basis for bringing an action:
 - (i) to award legal and physical custody or parenting time to either parent, provided that, until an order is entered granting custody to another, the mother shall have sole custody of the child;
 - (ii) to establish a child support obligation, which may be retroactive for up to two years immediately preceding the commencement of the action;
 - (iii) to obtain an order for contribution to the reasonable expenses of the mother's pregnancy and confinement; and/or

- (iv) to obtain an order for reimbursement of the costs of blood or genetic testing.

(e) **Action to vacate recognition.**

- (1) An action to vacate a recognition of paternity may be brought by the mother, father, husband or former husband who executed a joinder, the child who was the subject of the recognition, or the Band Authority.
 - (i) A mother, father, or husband or former husband who executed a joinder must bring the action within one year of the execution of the recognition or within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child.
 - (ii) A child must bring an action to vacate within six months after the child obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child, or within one year of reaching the age of majority, whichever is later.
 - (iii) If the Court finds a prima facie basis for vacating the recognition, the Court shall order the child, mother, father, and husband or former husband who executed a joinder to submit to blood or genetic tests.
 - (A) If the Court issues an order for the taking of blood or genetic tests, the Court shall require the party seeking to vacate the recognition to make advance payment for the costs of the blood or genetic tests.
 - (B) If the party fails to pay for the costs of the blood or genetic tests, the Court shall dismiss the action to vacate with prejudice.
 - (C) The Court may also order the party seeking to vacate the recognition to pay the other party's reasonable attorney's fees, costs, and disbursements.
 - (D) If the results of the blood or genetic tests establish that the person who executed the recognition is not the father, the court shall vacate the recognition.
 - (E) If a recognition is vacated, any joinder in the recognition under § 2035(b) is also vacated.
 - (F) The Court shall terminate the obligation of a party to pay ongoing child support based on the recognition.

- (G) A modification of child support based on a recognition may be made retroactive with respect to any period during which the moving party has pending a motion to vacate the recognition but only from the date of service of notice of the motion on the responding party.
- (2) The burden of proof in an action to vacate the recognition is on the moving party. Such request must be on the basis of fraud, duress, or material mistake of fact.
 - (i) The legal responsibilities in existence at the time of an action to vacate, including child support obligations, may not be suspended during the proceeding, except for good cause shown.
- (f) **Recognition form.** The Band Authority shall prepare a form for the recognition of parentage under this section. In preparing the form, the Band Authority shall consult with the individuals specified in § 2035(g). The recognition form must be drafted so that the force and effect of the recognition, the alternatives to executing a recognition, and the benefits and responsibilities of establishing paternity are clear and understandable. The form must include a notice regarding the finality of a recognition, the revocation procedure under § 2035 (c), and the procedure for vacating the recognition under § 2035 (e). The form must include a provision for each parent to verify that the parent has read or viewed the educational materials prepared by the Band Authority describing the recognition of paternity. The individual providing the form to the parents for execution shall provide oral notice of the rights, responsibilities, and alternatives to executing the recognition. Notice may be provided by audiotape, videotape, or similar means. Each parent must receive a copy of the recognition.
- (g) **Paternity educational materials.** The Band Authority shall prepare educational materials for new and prospective parents that describe the benefits and effects of establishing paternity. The materials must include a description and comparison of the procedures for establishment of paternity through a recognition of parentage under this section and an adjudication of paternity under § 2034 of this Title. The Band Authority shall consider the use of innovative audio or visual approaches to the presentation of the materials to facilitate understanding and presentation. In preparing the materials, the Band Authority shall consult with child advocates and support workers, battered women’s advocates and advocates for domestic abuse victims, social service providers, educators, attorneys, hospital representatives, and people who work with parents in making decisions related to paternity. The Band Authority will make the materials available without cost to hospitals, requesting agencies, and other persons for distribution to new parents.
- (h) **Hospital distribution of educational materials; recognition form.** Hospitals that provide obstetric services and the Band Authority shall distribute the educational

materials and recognition of parentage forms prepared by the Band Authority to new parents and shall assist parents in understanding the recognition of parentage form in accordance with § 2035 (f).

- (i) **More than one recognition.** If the Court receives more than one recognition of parentage for the same child, the Court shall notify the signatory on each recognition that the recognition is no longer effective and that each man has only a presumption of paternity.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2035.
Band Ordinance 01-21.

§ 2036. Paternity Established by Other Jurisdiction.

- (a) The Court shall give full faith and credit to properly issued court and administrative orders, judgments, or decrees of other Indian tribes, states, or federal agencies establishing paternity.
 - (1) Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the order and subject-matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued pursuant to the laws of that jurisdiction and does not violate the laws of the Band.
- (b) An order described in § 2036(a) must be authenticated by reasonable proof that the document tendered to the Clerk of the Court is a true copy of the order as it is recorded in the agency or court of the issuing jurisdiction.
 - (1) An authentication stamp issued by a clerk of court or custodian of records, or a court seal, is sufficient evidence of authenticity.
- (c) Unless defects in jurisdiction are apparent on the face of an order described in § 2036(a), the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to a notice of the order and to timely contest it, the Court shall enforce it as a Band Court Order.
- (d) Where an order described in § 2036(a) is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an original order of the Court to the extent that it does not violate the laws of the Band.

- (e) An order described in § 2036(a) does not automatically establish paternity for Band enrollment purposes.

Historical and Statutory Notes

Source:

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2036.

SUBCHAPTER 3

ENFORCEMENT

Section

- 2051. Withholding.**
- 2052. Withholding Upon Notice from Obligee or Public Authority.**
- 2053. Withholding Hearing; Service of Withholding Order.**
- 2054. Effect of Notice or Order for Withholding; Commencement and Amount of Withholding; Orders from Other Jurisdictions.**
- 2055. Priority.**
- 2056. Employer Expenses.**
- 2057. Notice from Obligor to Employer.**
- 2058. Notice to Court Upon Termination of Employment.**
- 2059. Order Terminating Income Withholding.**

§ 2051. Withholding.

- (a) Court-ordered child support shall be withheld from the obligor's income, regardless of the source, in accordance with this subchapter.
- (b) If a determination is made that an obligor has made excess child support payments, the Band Authority must be responsible to immediately reimburse the obligor. To recover its costs, the Band Authority may motion the Court to recoup the excess payments from the obligee.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29. T. II, § 1.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2051.
Band Ordinance 01-21.

§ 2052. Withholding Upon Notice from Obligee or Public Authority.

- (a) Except as provided in § 2052(c), an employer or other payer of funds must withhold

income or other payments from an obligor upon notice from an obligee or public authority when the following conditions are met:

- (1) the obligor is at least 30 days in arrears in making Court-ordered child support payments to the obligee;
 - (2) the obligee or public authority serves written notice of income withholding, showing the current child support obligation and the amount of the arrearage, on the obligor at least 20 days before serving the notice of income withholding and a copy of the Court's order establishing the child support obligation on the employer or other payer of funds;
 - (3) within the 20-day period, the obligor fails to move the Court for an order denying or changing the amount of withholding on the grounds that an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, or that the notice contains a mistake of fact with respect to the amount of the current child support obligation or the amount of the arrearage; and
 - (4) the obligee or public authority serves a copy of the notice of income withholding, showing the current child support obligation and the amount of the arrearage, a copy of the Court's order, and the provisions of this subchapter on the employer or other payer of funds.
- (b) The obligor may, at any time, waive the written notice required by § 2052(a)(2).
- (c) Income or other payments shall not be subject to withholding where:
- (1) Either the custodial or noncustodial parent demonstrates, and the Court enters a finding, that there is good cause not to require withholding of income or other payments; or
 - (2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative to withholding, and the agreement is reviewed and entered into the record by the Court.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, §§ 2.01, 2.03.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2052.

§ 2053. Withholding Hearing; Service of Withholding Order.

- (a) Within 30 days from the date an obligor files a motion with the Court to deny or change the amount of withholding under § 2052(a)(3) of this Title, the Court shall

hold a hearing on the motion and notify the parties of its decision.

- (1) If the Court finds an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, the Court shall enter an order denying withholding.
 - (2) If the Court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but that there was a mistake in the amount of the current support obligation or the amount of the arrearage, the Court shall order income withholding in the corrected amount. If the Court finds there was no mistake of fact, the Court shall order income withholding in the amount specified in the notice. If the Court orders income withholding, it shall order withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing.
- (b) The Band Authority will promptly refund amounts which have been improperly withheld.
- (c) If the Court issues an order for withholding under § 2053(a), it shall provide a copy of the order to the Band Authority. The Band Authority shall serve notice of the order on the obligor's employer or other payer of funds using the standard Federal withholding form together with a copy of the order. The Band Authority must allocate amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 3.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2053.
Band Ordinance 01-21.

§ 2054. Effect of Notice or Order for Withholding; Commencement and Amount of Withholding; Orders from Other Jurisdictions.

- (a) Notwithstanding any law to the contrary, a notice of withholding served in accordance with § 2052(a) of this Title or a withholding order issued and served in accordance with § 2053 of this Title, is binding on an employer or other payer of funds who is subject to the jurisdiction of the Band
- (b) Withholding shall begin no later than the first pay period that occurs after 14 days following the date of service of the notice to the obligor's employer or other payer of funds under § 2052(a)(4) of this Title or § 2053(c) of this Title.

- (1) An employer shall not discharge, refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this subchapter.
 - (2) An employer who is found to have violated this provision shall be subject to a fine of \$500.00.
- (c) Except as provided in § 2054(d) and (h), an employer or other payer of funds shall withhold and pay to the obligee or public authority, as specified in the notice served on the employer or other payer of funds:
- (1) the obligor's current child support obligation; and
 - (2) an additional amount not to exceed 20 percent of the current monthly obligation until the arrearage is paid.
- (d) An employer or other payer of funds shall not withhold an obligor's earnings more than the maximum amount permitted under the Consumer Credit Protection Act, 15 U.S.C. § 1673(b)(2).
- (e) Absent an order to the contrary, if an arrearage exists at the time a support order would otherwise terminate, income withholding shall continue in effect or may be implemented in an amount equal to the support order until all arrears have been paid in full.
- (f) If an employer or other payer of funds fails to withhold income or other payments in accordance with this subchapter, the employer or other payer of funds will be liable for the accumulated amount the employer or other payer of funds should have withheld from the obligor.
- (g) The Band Authority is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring that such orders are properly and promptly served on employers and other payers of funds within the Band's jurisdiction. The Band Authority will extend the full range of services available to respond to all requests from, and cooperate with, State and Tribal IV-D agencies.
- (h) The Band, the Court, and the Band Authority will recognize child support orders issued by other Tribes and Tribal organizations and by States, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B. The Court may not delay enforcement of any foreign child support orders.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, §§ 2.02, 4, 5.02.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2054.
Band Ordinance 01-21.

§ 2055. Priority.

- (a) A notice or order for withholding under this subchapter or execution or garnishment upon a judgment for child support arrears shall have priority over any other attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the obligor, except as provided for in this subchapter. Amounts withheld from an employee's income shall not exceed the maximum permitted by law.
- (b) In the event that there is more than one withholding order for child support for an obligor, the employer or other payer of funds shall put the orders into effect, giving priority first to amounts currently due and not in arrears up to the maximum amount allowed by law. If there are two or more orders for child support which cumulatively exceed the maximum amount allowed by law, the amount each obligee receives from the withholding shall be determined as the amount equal to the number of each obligee's children for whom support payments are due as a percentage of the total number of children for whom support payments are due. This paragraph pertains to withholding only and shall not affect the actual amount of support ordered.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 5.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2055.
Band Ordinance 01-21.

§ 2056. Employer Expenses.

An employer or other payer of funds may deduct two dollars from the obligor's remaining income or other payments for each payment made pursuant to a withholding order under this subchapter to cover the expenses involved in the withholding.

Historical and Statutory Notes

Source:

Band Ordinance 2-94, Ch. 29, T. II, § 6.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2055.

§ 2057. Notice from Obligor to Employer.

When an individual is hired for employment, the employer shall request that the individual disclose whether or not the individual has Court-ordered child support obligations that are required by law to be withheld from income and the terms of the Court order. The individual shall disclose this information at the time of hiring. When an individual discloses that the individual owes child support that is required to be withheld, the employer shall begin withholding according to the terms of the order and under this subchapter.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, §7.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2057.

§ 2058. Notice to Court Upon Termination of Employment.

When withholding is in effect and the obligor's employment is terminated, the obligor and the obligor's employer or other payer of funds shall notify the Court and the obligee or public authority responsible for child support enforcement of the termination within ten days of the termination date. The notice shall include the obligor's home address and the name and address of the obligor's new employer or payer of funds, if known. Information disclosed under this subchapter shall not be divulged except to the extent necessary for the administration of child support or when authorized by law.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 7.01.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2058.

§ 2059. Order Terminating Income Withholding.

Whenever an obligation for child support terminates under the terms of the order of this chapter, and where the obligation is enforced by income withholding from the obligor, the Court shall enter an order directed to the obligor's employer or other payer of funds, which terminates the income withholding. The order terminating income withholding must specify the effective date of the order, referencing the initial order or decree establishing the support obligation.

Historical and Statutory Notes

Source:

Band Ordinance 26-94, Ch. 29, T. II, § 8.
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2059.

CHAPTER 13

CHILD/FAMILY PROTECTION

Section

1. General Provisions
2. Children's Court
3. Child Abuse and Neglect
4. Foster Home Licensing Procedures
5. Guardianship
6. Adoptions

SUBCHAPTER 1

GENERAL PROVISIONS

Section

3101. Title of Chapter.
3102. Purpose.
3103. Definitions.
3104. Child/Family Protection Records.

§ 3101. Title of Chapter.

This chapter shall be entitled "The Child / Family Protection Statute".

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 1A.

§ 3102. Purpose.

This subchapter shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (a) to provide for the welfare, care and protection of the children and families under the jurisdiction of the Mille Lacs Band;
- (b) to preserve unity of the family, preferably by separating the child from his / her parents only when necessary;

- (c) to take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (d) to provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
- (e) to secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the children’s court under the provisions of this chapter;
- (f) to ensure that off-reservation courts will be willing to return Mille Lacs Band children to us by establishing this chapter;
- (g) to recognize and acknowledge the customs and traditions of the Mille Lacs Band with regards to child-rearing.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 1.

§ 3103. Definitions.

As used in this chapter:

- (a) **“Abandonment”** means the failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.
- (b) **“Abuse”** means the infliction of physical, emotional or mental injury on a child, or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his health, moods or emotional well- being is endangered.
- (c) **“Adult”** means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- (d) **“Band Assembly”** means the Legislature and Chief Executive of the Mille Lacs Band.
- (e) **“Child”** means a person who is less than eighteen (18) years old or¹ has not been emancipated by order of a court of competent jurisdiction.

- (f) **“Child Protection Team”** means a team established to involve and coordinate the child protection services of various agencies as set forth in § 3142 of this chapter.
- (g) **“Court”** or **“Children’s Court”** means the Children’s Court of the Mille Lacs Band of Chippewa Indians.
- (h) **“Custodian”** means a person, other than a parent or guardian, to whom legal custody of the child has been given.
- (i) **“Domicile”** means a person’s permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.
- (j) **“Emergency Foster Home”** means placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night (see “Foster Home”).
- (k) **“Extended Family”** is defined according to the customs and traditions of the Mille Lacs Band.
- (l) **“Foster Home”** means placement with a family whose home has been licensed under subchapter 4 (§§ 3171 - 3174) of this chapter.
- (m) **“Foster Home Inspector”** means a person selected to inspect and license foster homes under subchapter 4 (§§ 3171 - 3174) of this chapter.
- (n) **“Guardian”** means a person assigned by a court of competent jurisdiction, other than a parent, having the duty and authority to provide care and control of a child (see “Permanent Guardian,” “Temporary Guardian,” “Guardian Ad Litem,” and “Guardian of Property”).
- (o) **“Guardian Ad Litem”** means a person appointed by the court to represent the child’s interests before the court.
- (p) **“Guardian of Property”** means a person appointed by the court to manage the property of a child or incompetent person as set forth in subchapter 5 (§§ 3201 - 3211) of this chapter.
- (q) **“He”** means he or she, **“his”** means his or her, and singular includes plural.
- (r) **“Incompetent”** means an insane person or person who is for any cause mentally incompetent (as defined by the court) to take care of himself and to manage his property.

- (s) **“Indian”** means any member of a federally recognized Indian tribe, band or community, or Alaska Natives, or a person considered by the community to be Indian.
- (t) **“Juvenile Offender”** means a child who commits a “juvenile offense” prior to the child’s eighteenth (18th) birthday (see Juvenile Justice Code).
- (u) **“Juvenile Offense”** means a criminal violation of the Mille Lacs Band Laws which is committed by a person who is under the age of eighteen (18) at the time the offense was committed (see Juvenile Justice Code).
- (v) **“Neglect”** means the failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child’s health and well- being. “Neglect” shall include “abandoned” children.
- (w) **“Parent”** includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
- (x) **“Open Adoption”** means an adoption which is intended not to permanently deprive the child of connections to, or knowledge of, his or her natural family.
- (y) **“Permanent Guardian”** means a guardian who has been granted long term guardianship status as set forth in § 3202 of this chapter.
- (z) **“Protective Services Worker”** means the protective services worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities set forth in § 3141 of this chapter.
- (aa) **“Reservation”** means the territory under the jurisdiction of the Mille Lacs Band.
- (bb) **“Solicitor General”** means the Solicitor General or other designated person who appropriately performs the duties and responsibilities set forth in § 3122 of this chapter.
- (cc) **“Temporary Guardianship”** means a guardian who has been granted temporary guardianship status as set forth in subchapter 5 (§§ 3201 - 3211) of this chapter.
- (dd) **“Tribal Court”** means the Court of Central Jurisdiction of the Mille Lacs Band.
- (ee) **“Tribe”** means the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 2.

§ 3104. Child / Family Protection Records.

- (a) **Children’s Court Records.** A record of all hearings under this chapter shall be made and preserved. All Children’s Court records shall be confidential and shall not be open to inspection to any but the following:
- (1) the child;
 - (2) the child’s parent, guardian or custodian;
 - (3) the prospective adoptive parent(s);
 - (4) the child’s counsel or guardian ad litem;
 - (5) the Children’s Court personnel directly involved in the handling of the case;
 - (6) any other person by order of the Court, having a legitimate interest in the particular case or the work of the court.
- (b) **Law Enforcement and Social Services Records.** Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement and social services records shall be confidential and shall not be open to inspection to any but the following:
- (1) the child;
 - (2) the child’s parent, guardian or custodian;
 - (3) the child’s counsel or guardian ad litem;
 - (4) law enforcement and social services personnel directly involved in the handling of the case;
 - (5) the Children’s Court personnel directly involved in the handling of the case;
 - (6) any other person by order of the Court, having a legitimate interest in the particular case or the work of the court.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 28.

SUBCHAPTER 2
CHILDREN’S COURT

Section

- 3111. General Jurisdiction.**
- 3112. Jurisdiction Over Extended Family.**
- 3113. Continuing Jurisdiction.**
- 3114. Application of the Indian Child Welfare Act.**
- 3115. Transfer to State Court or Other Tribal Courts.**
- 3116. Transfer from Other Courts.**
- 3117. Full Faith and Credit; Conflict of Laws.**
- 3118. Rules of Procedures.**
- 3119. Cooperation and Grants.**
- 3120. Social Services.**
- 3121. Juvenile Counselor.**
- 3122. Solicitor General.**
- 3123. Guardian ad Litem.**
- 3124. Additional Court Personnel.**
- 3125. Modification, Revocation, or Extension of Court Orders.**
- 3126. Appeals.**
- 3127. Emancipation.**
- 3128. Authorization of Medical Treatment.**

§ 3111. General Jurisdiction.

- (a) There is hereby established for the Non-Removable Mille Lacs Band of Chippewa Indians a court to be known as the Court of Central Jurisdiction Children’s Court. The jurisdiction of the Children’s Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children and incompetents within the boundaries of the reservation, as well as other children who have been declared to be wards of the Children’s Court. The Children’s Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate.
- (b) The Children’s Court shall have jurisdiction over the following persons:
 - (1) Members of the Band under the age of eighteen (18) years;
 - (2) Persons under the age of eighteen (18) years who are eligible to become members of the Band;
 - (3) Indians, as defined in § 3103(r) of this chapter, who are under the age of eighteen (18) years and who are residing within the exterior boundaries of the reservation;

- (4) Children of members of the Band or other Indians, as defined in § 3103(r) of this chapter, including adopted children, who reside within the exterior boundaries of the reservation;
- (5) Children residing within the exterior boundaries of the reservation, for whatever reason, in the home of a member of the Band or other Indians, as defined in § 3103(r) of this chapter, as long as the parents, guardians, or custodians have consented to the jurisdiction of the Children's Court. Such consent, once given, may be revoked only with permission of the Children's Court; and
- (6) Incompetent persons residing or domiciled within the exterior boundaries of the reservation.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 3.01.

§ 3112. Jurisdiction Over Extended Family.

Where the Children's Court asserts jurisdiction over a person under § 3111 of this chapter, the court shall also have jurisdiction over the person's extended family whenever the court deems it appropriate.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 3.02.

§ 3113. Continuing Jurisdiction.

Where the Children's Court deems it appropriate, the court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the reservation.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 3.03.

§ 3114. Application of the Indian Child Welfare Act.

The Children's Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. § 1901-1963, where they do not conflict with the provisions of this chapter. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Children's Court unless specifically provided for in this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 3.041.

§ 3115. Transfer to State Court or Other Tribal Courts

In any proceeding before the Children's Court, the court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe have a significant interest in the child and the transfer would be in the best interests of the child.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 3.042.

§ 3116. Transfer from Other Courts.

- (a) **In General.** The Children's Court may accept or decline, under the procedures set forth in this chapter, transfers of child welfare cases from federal, state or other tribal courts.
- (b) **Procedures for Transfer from State Court**
 - (1) **Receipt of Notice.** The tribal agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Mille Lacs Band Social Service Department.
 - (2) **Investigation and Pre-Transfer Report by the Solicitor General.** The Band Social Services Department shall conduct an investigation and file a written report with the court within seven (7) days of receipt of notice from the Band's agent for service of notice.
 - (3) **Petition for Transfer.** The Band petition for transfer shall be filed by the Solicitor General within seven (7) days of receipt of recommendations from the court.
 - (4) **Intervention in State Court Proceedings.**

- (i) The Band may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings, and;
 - (ii) The Solicitor General or selected representatives may file a motion to intervene within seven (7) days of receipt of recommendations from the court.
- (5) **Acceptance of Transfer:** The Children’s Court will not accept a transfer from state court unless:
- (i) a parent or Indian custodian’s petition to state court for transfer is granted, or;
 - (ii) the Band’s petition to state court for transfer is granted, and;
 - (iii) the Band Social Services Department’s pre-transfer report recommends the acceptance of transfer, and;
 - (iv) the Solicitor General recommends acceptance.
- (c) **Hearing(s).** Upon receipt of transfer jurisdiction from state court, the Solicitor General shall file a child / family protection petition, and appropriate hearing(s) shall be held in accordance with this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, §§ 3.043, 3.044.

§ 3117. Full Faith and Credit; Conflict of Laws.

- (a) **State Court Orders.** State child custody orders involving children over whom the Children’s Court may exercise jurisdiction may be recognized by the Children’s Court only after a full independent review of such state proceedings has determined:
- (1) the state court had jurisdiction over the child, and;
 - (2) the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., were properly followed, and;
 - (3) due process was provided to all interested persons participating in the state proceedings, and;
 - (4) the state court proceedings does not violate the public policies, customs, or common law of the Mille Lacs Band.

- (b) **Court Orders of Other Tribal Courts.** Court orders of other tribal courts involving children over whom this Children’s Court could take jurisdiction shall be recognized by this Children’s Court after the court has determined:
- (1) that the other tribal court exercised proper subject matter and personal jurisdiction over the parties, and;
 - (2) due process was accorded to all interested parties participating in the other tribal court proceeding.
- (c) **Mille Lacs Band Interest.** Because of the vital interest of the Band in its children and those children who may become members of the Band, the statutes, regulations, public policies, customs and common law of the Band shall control in any proceeding involving an Indian child.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 3.05.

§ 3118. Rules and Procedure.

The procedures in the Children’s Court shall be governed by the rules of procedure for the Court of Central Jurisdiction which are not in conflict with this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 4.01.

§ 3119. Cooperation and Grants.

The Children’s Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of this chapter. This authority is subject to the approval of the Band Assembly.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 4.02.

§ 3120. Social Services.

The Children's Court shall utilize such social services as may be furnished by any tribal, federal or state agency provided that it is economically administered without unnecessary duplication and expense.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 4.03.

§ 3121. Juvenile Counselor.

- (a) **Selection.** The Mille Lacs Band shall select juvenile counselor(s) to carry out the duties and responsibilities set forth in this chapter. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled juvenile counselors or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.
- (b) **Qualifications.** The juvenile counselor shall have an educational background and/or prior experience in the field of delivering social services to youth and shall never have been convicted of any offense involving child abuse, or sexual abuse of a child.
- (c) **Resource Development.** The juvenile counselor shall identify and develop resources on the reservation, in conjunction with the Children's Court and the Chief Executive and Band Assembly, to enhance each tribal child's potential as a viable member of the community.
- (d) **Duties.** The juvenile counselor shall:
 - (1) make investigations as provided in this chapter or as directed by the court; and
 - (2) make reports to the court as provided in this chapter or as directed by the Children's Court; and
 - (3) provide counseling services; and
 - (4) perform such other duties in connection with the care, custody or transportation of children as the court may require.
- (e) **Prohibited Duties.** The juvenile counselor shall not be employed as or be required to perform the duties of a prosecutor or law enforcement official.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 5.01.

§ 3122. Duties of the Solicitor General.

The Solicitor General shall:

- (a) File petitions with the court as provided in this chapter;
- (b) Represent the Mille Lacs Band in all proceedings under this chapter; and
- (c) Perform such other duties as the court may order.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 5.02.

§ 3123. Guardian ad Litem.

At any stage of the proceedings conducted under this chapter the Children's Court may appoint separate counsel for the child, without affecting the right to counsel of the parents, guardians or other legal custodians, to act as guardian ad litem representing the child's best interests.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 5.03.

§ 3124. Additional Court Personnel

The court may set qualifications and appoint additional juvenile court personnel such as guardians ad litem, court appointed special advocates, Children's Court advocates, whenever the court decides that it is appropriate to do so.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 5.04.

§ 3125. Modification, Revocation, or Extension of Court Orders.

- (a) The Court may hold a hearing to modify, revoke or extend a court order under this chapter at any time upon the motion of:
 - (1) the child;
 - (2) the child's parent, guardian or custodian;
 - (3) the prospective adoptive parent(s) upon court order;
 - (4) the child's counsel or guardian ad litem;
 - (5) the Solicitor General;
 - (6) the institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision, or;
 - (7) the court on its own motion.
- (b) Any hearing to modify, revoke or extend a Court order shall be held in accordance with the procedures established for the order at issue.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 27.

§ 3126. Appeals.

- (a) Any party to a Children's Court hearing may appeal a final Children's Court order.
- (b) Any party seeking to appeal a final Children's Court order shall file a written notice of appeal with the court within thirty (30) days of the final order.
- (c) For purposes of appeal, a record of proceedings shall be made available to the child, his parent, guardian or custodian, the child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.
- (d) A Court order may be stayed by such appeal.
- (e) All appeals shall be conducted in accordance with Band Statute and Court of Central Jurisdiction rules of procedure as long as those provisions are not in conflict with the provisions of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 29.

§ 3127. Emancipation

A child over the age of sixteen (16) may petition the court for emancipation. The court shall grant such status when the child proves to the court that the child is capable of functioning as an independent and responsible member of the community.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 22.

§ 3128. Authorization of Medical Treatment.

- (a) At any time whether or not a child is under the authority of the court, the court may authorize medical or surgical care for a child when:
 - (1) **Unavailability of Parent, Guardian or Custodian.** A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or
 - (2) **Life Endangerment.** A physician informs the court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the court shall cause every effort to be made to grant the parent(s), guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.
- (b) In making its order the court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Band customs, traditions or religions.
- (c) After entering any authorization under this section, the court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the court and shall cause a copy of the authorization to be given to the physician or hospital or both, that was involved.
- (d) Oral authorization by the court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be

subject to criminal or civil liability in a court for performance of care or treatment in reliance on the court's authorization and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 23.

SUBCHAPTER 3

CHILD ABUSE AND NEGLECT

Section

- 3141. Protective Services Workers.**
- 3142. Child Protection Team.**
- 3143. Duty to Report Child Abuse and Neglect.**
- 3144. Investigation and Removal.**
- 3145. Notice of Removal.**
- 3146. Restrictions on Placement of Children.**
- 3147. Filing Child/Family Protection Petition.**
- 3148. Initial Hearing.**
- 3149. Notification of Rights.**
- 3150. Thirty (30) Day Hearing.**
- 3151. Formal Trial on the Issues.**
- 3152. Notice of Formal Trial on the Issues.**
- 3153. Default Judgment.**
- 3154. Six (6) Month Review.**
- 3155. Social Service Report.**
- 3156. Placement Preferences.**

§ 3141. Protective Services Workers.

- (a) Protective services workers shall be employed by the tribal social services department and/or the tribal law enforcement department.
- (b) The department(s) may cooperate with such state and community agencies as are necessary to achieve the purposes of this chapter. The department(s) may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Band Assembly.
- (c) A protective services worker shall:
 - (1) Receive reports of neglected, abused or abandoned children and be prepared

to provide temporary foster care for such children on a twenty-four (24) hour basis, and;

- (2) Receive from any source, oral or written, information regarding a child who may be in need of protective services.
 - (3) Upon receipt of any report or information under subparagraph (1) or (2) of this paragraph immediately:
 - (i) notify the appropriate law enforcement agency, and;
 - (ii) make prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.
 - (4) Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings and that his removal is necessary. Law enforcement officials shall cooperate with social services personnel to remove a child from the custody of his parents, guardian, or custodian when necessary.
 - (5) After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine whether any of such children is a child in need of protective services.
 - (6) Offer to the family of any child found to be a child in need of protective services appropriate services which may include, but shall not be restricted to, protective services.
 - (7) Within thirty (30) days after a referral of a potential child in need of protective services, submit a written report of his investigation and evaluation to the Solicitor General and to a central registry maintained by the department(s).
- (d) No child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays and holidays, unless a child / family protection petition is filed.
 - (e) Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services and of his authority to initiate a petition in the Children's Court.
 - (f) If the family declines the offered services, the worker may initiate a child / family

protection petition in Children's Court alleging a child in need of protective services if he believes it to be in the child's best interest.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 6.

§ 3142. Child Protection Team.

- (a) The Mille Lacs Band shall establish a child protection team. Establishment of the child protection team is an attempt, through the involvement and coordination of various agencies, to prevent Indian children from being abused or neglected. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.
- (b) Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs which will prompt immediate intervention and/or preventive actions to be taken. However, when a child's well-being is found to be endangered, the child protection team should recommend protective services as promptly, efficiently, and effectively as possible. These services are to be provided so as to ensure the child's immediate safety and health. Once attained, to the extent possible, actions are to be taken to correct the problems which caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and the appropriate family members.
- (c) The child protection team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. It is designed to promote cooperation, communication, and consistency among agencies. It is appropriate for the child protection team to debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies. The child protection team shall facilitate (not hinder) the decision-making process. Confidentiality shall be maintained by all child protection team members.
- (d) The duties of the child protection team shall include the development and implementation of procedures for:
 - (1) **Providing Oversight.**
 - (i) Monitor child abuse and neglect activities to ensure that adequate preventive, protective, and corrective services are provided.

- (ii) Review and track all child abuse and neglect cases which have been referred.
 - (iii) Review case plans for their adequacy.
 - (iv) Maintain confidentiality of information.
- (2) **Facilitating Provision of Services.**
- (i) Identify available community resources, programs and services.
 - (ii) Provide recommendations to various pertinent agencies.
 - (iii) Promote cooperation, communication, and consistency among agencies.
 - (iv) Provide a forum for debating what action would best promote the well-being of Indian children.
 - (v) Respond to inquiries from the community, area child protection teams, and other individuals and groups.
- (3) **Providing Technical Assistance**
- (i) Develop procedures to provide effective and efficient preventive, and corrective child abuse and neglect services.
 - (ii) Develop standards to determine which cases are to be investigated.
 - (iii) Provide information and technical recommendations to decision-making agencies.
 - (iv) Educate communities about child abuse and neglect problems and solutions.
 - (v) Assist in the development and implementation of plans to promote the long-term well-being of children and their families.
 - (vi) Assist in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 7.

§ 3243. Duty to Report Child Abuse and Neglect.

- (a) **Duty to Report.** Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to the tribal social services department and/or tribal law enforcement department.
- (b) **Person Specifically Required to Report.** Those persons who are mandated to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any other medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel, counselor; peace officer or other law enforcement official; judge, juvenile counselor(s), clerk of court, Solicitor General or other judicial system official(s).
- (c) **Anonymous Reports.** Any person who has reasonable cause to suspect that a child has been abused, neglected or abandoned shall report the abuse, neglect or abandonment. Those persons reporting, except those specified in paragraph (b) of this section, may remain anonymous.
- (d) **Immunity from Liability.** All persons or agencies reporting, in good faith, known or suspected instances of child abuse or neglect shall be immune from civil liability and criminal prosecution.
- (e) **Penalty for Not Reporting.** Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so shall be subject to a civil cause of action proceeding in the Court of Central Jurisdiction.
- (f) **Abuse and Neglect Reports.**
 - (1) **Form of Report.** Those persons mandated to report under paragraph (b) of this section shall promptly make an oral report to the Mille Lacs Band Social Services Department and then make a written report within 48 hours.
 - (2) **Contents of Written Report.** The following information shall be included in the written report:
 - (i) Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian.

- (ii) The child's age.
 - (iii) The nature and content of the child's abuse and neglect.
 - (iv) Previous abuse or neglect of the child or his siblings, if known.
 - (v) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.
 - (vi) The name and address of the person or agency making the report.
- (g) **Photograph of Visible Trauma.** Persons reporting suspected abuse or neglect may photograph or cause X-rays to be taken of the child suspected of being abused and such photographs or X-rays may be introduced into evidence at a hearing.
- (h) **Central Registry.** The Mille Lacs Band Social Services and Mille Lacs Band Law Enforcement shall maintain a central registry of reports, investigations and evaluations made under this chapter. The registry shall contain the information furnished by Band personnel throughout the reservation, including protective services workers, probation officers, caseworkers and Indian Child Welfare Program employees. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years (unless the Children's Court orders that individual records shall be kept on file beyond that date in order to protect other siblings). Data and information in the central registry shall be confidential and shall be made available only with the approval of the director of the department to the Children's Court, social services agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 8.

§ 3144. Investigation and Removal.

- (a) **Investigation.** The child abuse or neglect report shall be investigated within forty-eight (48) hours by the Social Services Department or other appropriate agency, unless the Children's Court directs otherwise.
- (b) **Authority to Remove.** If the law enforcement or social services personnel investigating a report of child abuse or neglect finds that the grounds for removal, listed in paragraph (c) of this section have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement.

- (c) **Grounds for Emergency Removal.** A child shall not be removed from the home of the child's parents, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the Children's Court, except as follows:
- (1) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm, or;
 - (2) When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.
- (d) **Power to Remove.** A Social Services worker or Law Enforcement officer shall have the power to remove a child pursuant to this section provided that:
- (1) Reasonable grounds existed at the time of the removal to believe the removal was necessary, and;
 - (2) The person removing the child ensures the safety and well-being of the child, until such time as the Children's Court assumes control of the matter, and;
 - (3) The person removing the child complies with the notice provisions contained in § 3145 of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 9.

§ 3145. Notice of Removal.

- (a) **Notice to the Children's Court.** After a child is removed from his home, the person who removed the child shall attempt to contact the Children's Court within eight (8) business hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12:00 p.m. the next Court working day.
- (b) **Notice to the Parent, Guardian or Custodian.** The Court shall make all reasonable efforts to notify the parents, guardian or custodian, within twelve (12) hours of the Court's actual notice of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 10.

§ 3146. Restrictions on Placement of Children.

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be detained in the following community-based shelter care facilities:

- (a) A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective residence;
- (b) A facility operated by a licensed child welfare services company;
- (c) With a relative of the child who is willing to guarantee to the court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the court; or
- (d) Any other suitable place, other than a facility for the care and rehabilitation of juvenile offenders to which children adjudicated as juvenile offenders may be confined and which meets the standards for shelter-care facilities established by the department.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 11.

§ 3147. Filing Child/Family Protection Petition.

- (a) **Authorization to File Petition.** Formal child / family protection proceedings shall be instituted by a child / family protection petition filed by the Solicitor General on behalf of the Band and in the best interests of the child.
- (b) **Time Limitations.** If a child has been removed from the home, a child / family protection petition shall be filed with the Children's Court no later than 12:00 p.m. of the second court working day following the removal.
- (c) **Contents of Petition.** The child / family protection petition shall set forth the following with specificity:
 - (1) The name, birth-date, sex, residence and tribal affiliation of the child;

- (2) The basis for the Court's jurisdiction;
- (3) The specific allegations of abuse, neglect or abandonment;
- (4) A plain and concise statement of the facts upon which the allegations of abuse, neglect or abandonment are based, including the date, time and location at which the alleged facts occurred;
- (5) The names, residences and tribal affiliation of the child's parents, guardians or custodians, if known;
- (6) The names, relationship and residence of all known members of the child's extended family and all former care givers, if known, and;
- (7) If the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 12.

§ 3148. Initial Hearing.

- (a) **Hearing Date.** An initial hearing shall be held regarding the removal of a child before the end of the second working day following the filing of the child/family protection petition.
- (b) **Purpose.** The purpose of the initial hearing is to determine whether it is reasonable to believe that continuing absence from the home is necessary to protect the well-being of the child.
- (c) **Advice of Rights.** During the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in § 3149 of this chapter.
- (d) **Nature of Hearing.** The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded at this hearing as long as it is otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, Social Services, the child's extended family and any other person as determined appropriate by the court shall be admitted.
- (e) **Possible Outcomes of the Initial Hearing:**
 - (1) The child/family protection petition may be dismissed and the child returned to the home.

- (2) The child may be returned to the home of the parents, guardians or custodians under the supervision of the court and another hearing held within thirty (30) days.
- (3) The child may continue in the child's out-of-home placement and a thirty (30) day hearing will be held.
- (f) **Notice of Initial Hearing.** The court shall make all reasonable efforts to advise the parents, guardians or custodian of the time and place of the initial hearing. The court shall request that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the court is unable to contact the parent, guardian or custodian, notice shall be given to members of the extended family of the child.
- (g) **Unresolved Issues.** If the problems are not resolved at the initial hearing or the thirty (30) day hearing, the Court will set a date for a formal hearing on the issues. Such date will be no later than ninety (90) days after the filing of the child/family protection petition.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 13.

§ 3149. Notification of Rights.

All parties have a right to be represented by an advocate / attorney at their own expense in all proceedings under this chapter, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the court, ten (10) days prior to any hearing.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 14.

§ 3150. Thirty (30) Day Hearing.

- (a) A second hearing will be held within thirty (30) days following the initial hearing. The purpose of this hearing is for the court to reassess whether continuing court intervention is necessary to protect the well-being of the child.

- (b) The thirty (30) day hearing shall be held according to paragraphs (b), (c), (d), (e) and (f) of § 3148 of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 15.

§ 3151. Formal Trial on the Issues.

- (a) **Time Limitation.** The formal trial on the issues will be set for no later than ninety (90) days following the filing of the child/family protection petition.
- (b) **Admissibility.** The records of the initial hearing and the thirty (30) day hearing shall not be admissible at the formal trial. This shall not be construed to prevent the admissibility of any evidence that was presented at these hearing(s) which would be admissible under the court's rules of evidence.
- (c) **Closed Hearing.** The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's family, and other persons determined to be appropriate by the court shall be admitted.
- (d) **Advice of Rights.** At the beginning of the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in § 3149 of this chapter.
- (e) **Child Witnesses.** If the court determines that it is in the best interests of the child and does not violate the rights of a party, the court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the court shall specifically set out the reasons for this determination on the record.
- (f) **Burden of Proof.** The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the child/family protection petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued court intervention.
- (g) **Outcome of Hearing.** The court will either find the allegations of the child/family protection petition to be true or dismiss the child/family protection petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.
- (h) **Return to Home.** The court may find the allegations of the child/family protection petition to be true, but that out of home placement is not needed to protect the child. The court may, however, due to unresolved problems in the home, continue court intervention and supervision as appropriate.

- (i) **Grounds for Continuing Removal from the Home.** The court may find the allegations of the child/family protection petition to be true and order that the child remain out of the home. The grounds for continuing removal from the home of a parent, guardian or custodian are:
- (1) A child has no parent, guardian or custodian available, willing and capable to care for the child.
 - (2) The child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions.
 - (3) The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his/her parent, guardian or custodian, which is necessary for the child's health and well-being, and the parent or guardian is incapable of continuing to provide the child with adequate food and care.
 - (4) The child has been sexually abused or sexually exploited.
 - (5) The child has committed juvenile offenses as a result of parental pressure, guidance or approval.
 - (6) The child has been emotionally abused or neglected.
 - (7) The child has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.
- (j) **Court Order for Continuing Removal.** The court shall specify in its order the necessary intervention and appropriate steps, if any, the parent, guardian or custodian must follow to correct the underlying problem. The court shall make particularized findings as to the grounds for continuing removal of the child from the home.
- (k) **Return of Child to Parent, Guardian or Custodian.** The court may find the allegations of the child/family protection petition to be true and out-of-home placement necessary, but with the performance of specified actions by the parent, guardian or custodian, the child may be returned absent good cause to the contrary. The order of the court will specify actions, and the time frames for such actions, that parents, guardians, or custodians must accomplish before the child is returned. The order will also specify the responsibilities of any support agency or personnel to be involved.
- (l) **Out-Of-Home Placement.** The court may find the allegations of the child / family protection petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home, absent specific order of this court. The court shall specify what steps the parents shall take to demonstrate their abilities to care for their child, and specify to the parties what

factors the court will consider at a subsequent hearing to determine whether or not the child should be returned.

- (m) **Written Order.** The court shall specify in writing the facts, grounds, and statutory sections upon which it relied to make its decisions.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 16.

§ 3152. Notice of Formal Trial on the Issues.

- (a) **Summons.** The court shall issue a summons to the parent, guardian or custodian and such other persons as appear to the court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the court at the time set for the formal trial.
- (b) **Attachments to Summons.** A copy of the child/family protection petition shall be attached to each summons. The court shall also attach a notice to the parent, guardian or custodian which advises them of their rights under section 3149 of this chapter.
- (c) **Personal Service.** If the parties to be served with a summons can be found within the territorial jurisdiction of the Mille Lacs Band, the summons, a copy of the child/family protection petition and the notice of rights shall be served personally upon them at least twenty (20) court days before the formal trial on the issues.
- (d) **Mail Service.** If the parties are within the exterior boundaries of the reservation but cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served by certified mail with a return receipt requested, at least twenty (20) days before the formal trial.
- (e) **Notice to Extended Family.** If the court cannot accomplish personal or mail service on the parent, guardian or custodian, the court shall attempt to notify the parent, guardian, custodian by contacting members of the extended family of the parent, guardian, custodian, and/or the extended family of the child.
- (f) **Service of Summons.** Service of summons may be made under the direction of the court by any person eighteen (18) years of age or older who is not a party to the proceedings.
- (g) **Publication.** In a child/family protection case where it appears within the body of the petition or within an accompanying statement that the parent, guardian or custodian does not reside within the territorial jurisdiction of the Mille Lacs Band, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after due personal service or service by certified mail has been unable to be effected, the court shall direct the clerk to publish legal notice in a newspaper, printed in the

county or on the reservation, qualified to publish summons once a week for three consecutive weeks with the first publication of the notice to be at least twenty-one (21) days prior to the date fixed for the hearing. Such notice shall be directed to the parent, guardian or custodian if their names are known, or if unknown a phrase to whom it may concern, be used and applied to and be binding upon any such person whose names are unknown. The name of the court, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms, shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be paid by the Mille Lacs Band. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this paragraph.

- (h) **Contempt Warning.** The summons issued by the court shall conspicuously display the words:

NOTICE, VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO MILLE LACS BAND STATUTE 1303-MLC-4, SECTION 17.05. THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 17.

§ 3153. Default Judgment.

- (a) **When Appropriate.** If the parent, guardian or custodian fail to appear for the formal trial, the court may find the parent, guardian or custodian in default, and enter a default order of child/family protection and order necessary intervention and appropriate steps the parents, guardian or custodian must follow to correct the problem.
- (b) **Notice Determination.** Prior to finding a parent, guardian, or custodian in default, the court must be satisfied actual notice has been given or that all reasonable steps have been taken to provide notice of the formal trial to the parent, guardian or custodian. The court must also find that the petitioner can prove the elements of the child/family protection petition.
- (c) **Written Order.** If the parent, guardian or custodian is found in default, the court shall specify the facts, grounds, and statutory provisions upon which it relied to make the decision.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 18.

§ 3154. Six (6) Month Review.

- (a) **Review Requirement.** The status of all children subject to a child / family protection order shall be reviewed by the court at least every six (6) months at a hearing to determine whether court supervision shall continue, except that the first review following a formal trial on the issues shall be held within ninety (90) days of the formal trial on the issues.
- (b) **Return to Home.** A child shall be returned home following review hearing unless the court finds that a reason for removal as set forth in § 3151(i) of this chapter still exists. The court may, however, due to unresolved problems in the home, continue court intervention and supervision if appropriate.
- (c) **Written Order.** If continued court intervention is determined to be necessary, the Court shall set forth the following in a written order:
 - (1) What services have been provided or offered to the parent, guardian or custodian to help correct the underlying problem(s).
 - (2) The extent to which the parent, guardian or custodian has visited or contacted the child, any reason why such visitation and/or contact has been infrequent or has not otherwise occurred.
 - (3) Whether the parent, guardian or custodian is cooperative with the Court.
 - (4) Whether additional services should be offered to the parent, guardian or custodian.
 - (5) Whether the parent, guardian or custodian should be required to participate in any additional programs to help correct the underlying problem(s).
 - (6) When the return of the child can be expected.
- (d) **Additional Steps.** The court at the review hearing may order that a guardianship petition be filed.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 19.

§ 3155. Social Service Report.

- (a) **Requirement of a Social Services Report.** To aid the court in its decision, a social services report consisting of a written evaluation of matters relevant to the disposition of the case shall be made by the person or agencies filing the petition.

- (b) **Contents of a Social Services Report.** The social services report shall include the following points, and be made available to the court, and the parties as deemed appropriate by the court, at least three (3) days prior to a child/family protection review hearing:
 - (1) A summary of the problem(s).
 - (2) What steps, if any, have the parent, guardian, custodian or social services personnel already taken to correct the problem(s).
 - (3) What services could benefit the parent, guardian or custodian, but are not available in the community.
 - (4) A report on how the child is doing in his/her current placement(s) since the last hearing. If there have been any moves, the report will contain the reason for such moves.
 - (5) Dates of contacts with parent, guardian or custodian and the child since the first hearing was held, method of contact, duration and subjects discussed.
 - (6) If there have been no contacts with the parent, guardian, custodian by the social worker, what efforts have been made to contact such parties.
 - (7) An assessment of when the child is expected to return home.
 - (8) A list of who the extended family members are and a list of contacts or attempts to contact such family members regarding placement of child.
 - (9) Social services personnel shall develop a case plan and shall make recommendations for the next six (6) months. Such recommendations will include:
 - (i) A treatment plan for the parents, guardian or custodian.
 - (ii) Future placement of the child.
 - (iii) What services should be provided for the child, if services are needed.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 20.

§ 3156. Placement Preferences.

- (a) **Least Restrictive Setting.** If a child cannot be returned home, the child shall be placed in the least restrictive setting which most approximates a family in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account any special needs of the child. The placement restrictions set forth in section 3146 of this chapter shall be followed.
- (b) **Order of Preferences.** Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:
 - (1) Members of the extended family.
 - (2) An Indian family of the same Band as the child.
 - (3) An Indian family.
 - (4) People who have a relationship with the child, but who are not related to the child.
 - (5) Any other family which can provide a suitable home for such a child.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 21.

SUBCHAPTER 4

FOSTER HOME LICENSING PROCEDURES

Section

3171. Inspection and Licensing Procedures.

3172. Foster Home Requirements.

3173. The Foster Family.

3174. The Foster Child.

§ 3171. Inspection and Licensing Procedures.

- (a) The Mille Lacs Band shall select one or more persons as the foster home inspector(s). The foster home inspector shall examine homes of Band members and others who reside both within a thirty (30) mile radius of Mille Lacs Band trust or allotted land. The foster home inspector shall submit a recommendation to the Band Assembly, who shall act upon said recommendation within thirty (30) days of receipt of said recommendation.
- (b) Except under exceptional circumstances, or in order to preserve a family unit, no foster home may accept more than four (4) foster children.
- (c) Any license issued by the foster home inspector shall apply only to the residence(s) where the family is living at the time application for a license is made, and a permanent change of residence automatically terminates the license. The foster care parents are required to notify the foster care inspector whenever a change of residence is contemplated.
- (d) The foster care parents must also notify the foster care inspector whenever a change in the household occurs. Examples of a change in the household include but are not limited to, if one of the foster care parents is convicted or is accused of a felony or gross misdemeanor crime or if one of the foster parents moves out of the residence, or if any other person moves into the residence, the foster care inspector must be informed within seventy-two (72) hours. Failure to timely notify the foster care inspector of a change in circumstance will result in the immediate suspension of the license.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 24.01.

Band Ordinance 36-03, § 1.

§ 3172. Foster Home Requirements.

- (a) The home shall be constructed, arranged and maintained so as to provide for the health and safety of all occupants. The foster care inspector may, upon twenty-four (24) hours' notice, inspect a foster care dwelling at any time.
- (b) Heating, ventilation, and light shall be sufficient to provide a comfortable, airy atmosphere. Furnishing and housekeeping shall be adequate to protect the health and comfort of the foster child.
- (c) Comfortable beds shall be provided for all members of the family. Sleeping rooms must provide adequate opportunities for rest. All sleeping rooms must have a window

of a type that may be opened readily and may be used for evacuation in the event of an emergency.

- (d) Play space shall be available and free from hazards which might be dangerous to the life or health of the child.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 24.02.

§ 3173. The Foster Family.

- (a) All members of the household must be in such physical and mental health as will not adversely affect either the health of the child or the quality and manner of the child's care.
- (b) Members of the foster family or household shall be of good character and habits. They must never have been convicted of a sex offense. They may not have any felony convictions within the last five (5) years. Exceptions concerning non-sexual felony convictions can be made providing adequate information is provided indicating that a change of character has occurred.
- (c) The person in charge of the foster home shall be of suitable temperament to care for the children, shall understand the special needs of the child as an Indian person and shall be capable of bringing the child up as an Indian person who is well adjusted and able to get along both within the tribal community and in the non-Indian community as well.
- (d) Foster parents shall be responsible, mature individuals who are, in the view of most community members, of good character. Foster parents must be at least twenty-one (21) years old (unless a member of the child's extended family), but there is no upper age level provided the foster parent has the physical and emotional stamina to deal with the care and guardianship of a foster child. The foster parent must be willing, when necessary, to cooperate with the biological parents and must be willing to help the family re-establish necessary family ties.
- (e) A foster home does not necessarily have to have both a male and a female foster parent. The foster care inspector may, at the inspector's discretion, certify a foster home with a single foster parent provided that foster parent displays the outstanding qualities necessary to raise a foster child.
- (f) The foster parent must have an income sufficient to care for all individuals in the foster home. The foster care inspector may take into account the state stipend when determining the financial ability of the foster care parents.

- (g) Any time a pre-school foster child is placed in a foster home there must be at least one (1) foster parent in full time attendance. For school age children the foster parent must show the arrangements which will be made for those periods of time when both foster parents are employed. Infants and young children shall never be left alone without competent supervision.
- (h) Without specific approval by the Band Assembly, a foster home shall not be licensed whenever any member of the family is mentally ill or on convalescent status from a mental hospital or is on parole or probation or in an inmate of a penal or correctional institution.
- (i) The standards the foster care inspector shall use in judging the above criteria shall be those of the Mille Lacs Reservation Indian community.
- (j) The foster care inspector is authorized to make a complete investigation to determine the adequacy of the foster care home. The inspector shall be authorized to examine not only the potential foster home parents, but also any other Band member or community member who is familiar with the applicants and is familiar with the type of care they provide to the children.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 24.03.

§ 3174. The Foster Child.

- (a) The daily routine of a foster child shall be such as to promote good health, rest and play habits.
- (b) The responsibility for a child's health care shall rest with the foster parents. In case of sickness or accident to a child, immediate notice shall be given to the foster care inspector. Foster care parents may consent to surgery or other treatment in a medical emergency.
- (c) The foster care parents shall not subject the child to verbal abuse, derogatory remarks directed at the child, the child's natural parents or relatives, or to threats to expel the child from the foster home. No child shall be deprived of meals, mail or family visits as a method of discipline. When discipline or punishment must be administered, it shall be done with understanding and reason. The method of punishment will be that which is accepted by the people of the Mille Lacs Reservation Indian community.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 24.04.

SUBCHAPTER 5

GUARDIANSHIP

Section

- 3201. Purpose.**
- 3202. Types of Guardianships.**
- 3203. Guardianship of Property.**
- 3204. Permanent Guardianships.**
- 3205. Temporary Guardianships.**
- 3206. Who May File Guardianship Petitions.**
- 3207. Contents of Guardianship Petition.**
- 3208. Guardianship Report.**
- 3209. Guardianship Procedures.**
- 3210. Management of Property.**
- 3211. Incompetent Persons.**

§ 3201. Purpose.

- (a) The Children's Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of children under the court's jurisdiction or incompetents who have no guardian legally appointed by will or need. Such appointment may be made on the petition of a relative or other person on behalf of the child or incompetent, or a petition of the child if at least fourteen (14) years of age. Before making such appointment, the court must cause such notice as the court deems reasonable to be given to any person having the care of the child, and to such other relatives of the child residing on the reservation as the court may deem proper, and in cases of adult incompetents, the court may cause notice to be given to the incompetent at least ten (10) calendar days before hearing the petition.
- (b) If a child is under the age of fourteen (14) years, the court may nominate or appoint his guardian. If he is fourteen (14) years of age or older, he may nominate his own guardian who, if approved by the court, must be appointed accordingly. If the guardian nominated by the child is not approved by the court, or if the child resides outside of the reservation, or if, after being duly cited by the court, he neglects for ten (10) days to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.
- (c) When a guardian has been appointed by the court for a child under the age of fourteen (14) years, the child, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court. A guardian appointed may as specified by the court have the custody and care of the education of the child and the care and management of the child's property until such child reaches the age of eighteen (18), or marries, or is emancipated by the court under section 3127 of this chapter, or until

the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's individual Indian Money Market Account or assets otherwise held for the benefit of the child. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

- (d) The court may order that the court disburse monthly reimbursement payments to the person or agency to whom custody is granted under this statute, provided sufficient funds have been appropriated by the Band Assembly. Such disbursements must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by band statute.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.01.

§ 3202. Types of Guardianship.

The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary guardianship and permanent guardianship.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.02.

§ 3203. Guardianship of Property.

The court may appoint a guardian of the property of a child or incompetent person under such terms and conditions as the court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or until the incompetent person becomes competent or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.03.

§ 3204. Permanent Guardianship.

The court may appoint a permanent guardian for the child under such terms and conditions as the court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardian(s) rather than the competency or suitability of the parent(s). The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.04.

§ 3205. Temporary Guardianship.

The court may appoint a temporary guardian under such terms and conditions as the court sets forth in the written order. A temporary guardianship may be terminated if the court determines that it is in the best interests of the child to change custody from the temporary guardianship to a new guardian or to return the child to the parent, guardian or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.05.

§ 3206. Who May File Guardianship Petition.

Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.06.

§ 3207. Contents of Guardianship Petition.

- (a) The petition for guardianship shall include the following, to the best information and belief of the petitioner:

- (1) The full name, address and tribal affiliation of the petitioner;
 - (2) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
 - (3) The basis for the court's jurisdiction;
 - (4) The relationship of the proposed guardian to the proposed ward;
 - (5) The name and address of the person or agency having legal or temporary custody of the proposed ward;
 - (6) The type of guardianship requested;
 - (7) In the case of an alleged incompetent person, the grounds for incompetency under § 3211 of this chapter; and
 - (8) A full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest (if guardianship of property is requested).
- (b) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the court.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.07.

§ 3208. Guardianship Report.

- (a) Upon the filing of a guardianship petition, the court shall immediately request that the Social Services Department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the court in determining the best interests of the proposed ward.
- (b) No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the court. The guardianship report shall be submitted to the court at least ten (10) days before the hearing. The court may order additional reports as it deems necessary.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.08.

§ 3209. Guardianship Procedures.

The procedures for guardianship hearings shall be in accordance with §§ 3148(c), (d) and (e), 3149, 3155 and 3156 of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.09.

§ 3210. Management of Property.

- (a) In the event that any guardian shall receive any money or funds of any child or incompetent person during his or her term of office as guardian, before taking and receiving into custody such money or funds, the court may require of such person a bond with sufficient surety to be approved by the court and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust, and the following conditions shall form the part of such bond without being expressed therein:
 - (1) To make an inventory of all the estate of the ward that comes into possession or knowledge of the guardian and to return the same within such time as the court may order, and;
 - (2) To dispose of and manage the estate according to law and for the best interests of the ward, and faithfully to discharge trust duties in relation thereto, and also in relation to the care, custody and education of the ward, and;
 - (3) To render an account on oath of the property, estate and money of the ward in the guardian's hands and all the proceeds or interests derived therefrom, and of the management and disposition of the same, within three (3) months after being appointed, and at such other times as the court directs, and at the expiration of the trust, to settle all accounts with the court or judge or with the ward if the ward is of full age, or the ward's legal representative, and to pay over and deliver all the estate, monies and effects remaining in the guardian's hands, or due from the guardian on such settlement to the person who is legally entitled thereto.
- (b) The funds of any child or incompetent must be used by his guardian solely for the support and education of such child and for the support of such incompetent, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such ward, and in such manner as can reasonably be afforded according to the income and estate of said ward.
- (c) If determined to be appropriate by the court, the written order may set forth that the child's property may not be used for the child's care, but rather the ward's property to

be managed for the child until the child reaches the age of eighteen (18) or is emancipated by the court.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.10.

§ 3211. Incompetent Persons.

- (a) In case of incompetent persons, if after a full hearing and examination upon such petition, and upon further proof by the certificates of at least two qualified physicians showing that a person is incompetent as defined in this chapter, it appears to the court that the person in question is not capable of taking care for their self and capable of managing their property, the court shall appoint a guardian of the person and estate within the powers and duties specified in this chapter.
- (b) Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of their ward and the management of their estate until such guardian is legally discharged; the guardian must give bond to the ward in a similar manner and with similar conditions as specified with respect to the guardianship of a child.
- (c) Any person who has been declared incompetent or the guardian of the incompetent, or any relative of such person within the third degree or any friend, may petition the court in which the person was declared incompetent, to have the determination of his incompetency redetermined. The petition shall be accompanied by two (2) physicians and shall state that such person is then competent. The court shall require notice be given of a hearing upon the petition at some date after the petition has been filed; and at the hearing upon the petition, witnesses shall be examined and a determination made by the court as to whether the petition should be granted and the incompetent person declared of sound mind and capable of taking care of himself and his property, his restoration to competency shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 25.11.

SUBCHAPTER 6

ADOPTIONS

Section

- 3231. Open Adoptions.**
- 3232. Consent to Adoptions.**
- 3233. Execution of Consent to Adoption.**
- 3234. Who May File an Adoption Petition.**
- 3235. Contents of Adoption Petition.**
- 3236. Notice.**
- 3237. Home Studies.**
- 3238. Withdrawal of Consents.**
- 3239. Adoption Preferences.**
- 3240. Hearing Procedures.**
- 3241. Adoption Decree.**

§ 3231. Open Adoptions.

Adoptions under this statute shall be in the nature of “Open Adoptions.” The purpose of such open adoptions is not to permanently deprive a child of connections to, or knowledge of, the child’s natural family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this end the following shall apply and be contained in all adoptive orders and decrees:

- (a) The adoptive parents and adoptive child shall be treated under the law as if the relationship was of a natural child and parent, except as set forth herein.
- (b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his natural family and tribal heritage.
- (c) The adoptive child and members of the child’s natural extended family, including parents shall have the right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents.
- (d) Adoption shall not serve to prevent an adoptive child from inheriting from a natural parent in the same manner as any other natural child. The natural parent shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as the natural parents and child.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.01.

§ 3232. Consent to Adoption.

- (a) **When not required.** Written consent to an adoption shall not be required if:
 - (1) The parent's rights have been terminated;
 - (2) The parent has relinquished their parental rights;
 - (3) The parent has been declared incompetent.

- (b) **When required.** Written consent to an adoption shall be required from:
 - (1) The biological or adoptive mother;
 - (2) The biological, adoptive, or acknowledged father;
 - (3) The custodian, if empowered to consent;
 - (4) The court, if the custodian is not empowered to consent;
 - (5) The child, if the child is over twelve (12) years of age.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.02.

§ 3233. Execution of Consent to Adopt.

Written consent to an adoption shall be executed and acknowledged before the court. Consent shall not be accepted or acknowledged by the court until fourteen (14) days after the birth of a child. An interpreter shall be provided for the person consenting to the adoption if they do not understand English. The consent of a child over the age of twelve (12) years shall be given orally either in open court, or in chambers with the judge and any other person(s) the judge deems necessary present.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.03.

§ 3234. Who May File an Adoption Petition.

Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall

be the joint petition of husband and wife, except that if one of the spouses is the natural or adopted parent of the proposed adoptee, said person shall not be required to join in the petition.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.04.

§ 3235. Contents of Adoption Petition.

- (a) The petition for adoption shall include the following, to the best information and belief of the petitioner:
 - (1) The full name, address, and tribal affiliation of the petitioner;
 - (2) The full name, sex, residence, date and place of birth, and tribal affiliation of the proposed adoptee;
 - (3) The name by which the proposed adoptee shall be known if the petition is granted;
 - (4) The basis for the court's jurisdiction;
 - (5) If the proposed adoptee is a child, a full description and statement of value of all property owned, or possessed in which the child has an interest;
 - (6) The relationship of the petitioner to the proposed adoptee; and
 - (7) The names and addresses of any person or agency whose consent to aid adoption is necessary.
- (b) Where there is more than one proposed adoptee, and the proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.
- (c) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a clerk of the court.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.05.

§ 3236. Notice.

- (a) Notice shall be provided in accordance with the notice procedures set forth in paragraph (b) of this section except that the court may determine that it is unnecessary to give notice to specific individuals, including a parent whose rights have been terminated.
- (b) Notice shall be given by personal service. If service cannot be made personally, the court may authorize service by certified mail at the last known address of the person to be served. If notice cannot be served by registered mail, the court may authorize service by publication in either the tribal newspaper of the reservation, or a newspaper of general circulation in the county where the court is located, once a week for three consecutive weeks. All notices served whether personally or by certified mail shall be received by the person named therein no less than ten (10) days prior to the date set for the hearing. No hearing can be held sooner than ten (10) days after the last publication where service is made.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, §§ 26.06, 26.07.

§ 3237. Home-Studies.

- (a) When a petition for the adoption of a child is filed with the court, the court shall immediately request that the Social Services Department or other qualified agency conduct a home study on the petitioner and report on the child. The home-study and report shall relate the circumstances of the home, the petitioner and their ability, both physical and mental, to assume the responsibilities of a parent of the child. The home-study shall contain other pertinent information designed to assist the court in determining the best placement for the child. The home-study will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, the child's tribal affiliation. The home-study or report shall not be required where the proposed adoptee is an adult.
- (b) No determination can be made on a petition for adoption until the home-study and report has been completed and submitted to and considered by the court. The home-study shall be submitted to the court no later than ten (10) days before the hearing.
- (c) The home-study and report may be consolidated into one document. The court may order additional home-studies or reports as it deems necessary.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.08.

§ 3238. Withdrawal of Consents.

- (a) Any consent given under the provisions of this subchapter (§§ 3232-3241) may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.
- (b) All withdrawals must be written and notarized or witnessed by a clerk of the court, with the original being filed with the court.
- (c) Within two (2) years after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent which made the adoption possible was obtained through fraud or duress. Upon such a showing the court shall vacate the decree and return the adopted person to that status he had prior to entry of the decree.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.09.

§ 3239. Adoption Preferences.

The preference of placement in adoption shall be in the following order unless the court determines that the child's best interests require deviation from the preferences:

- (a) Extended family members;
- (b) A tribal member or person eligible for tribal membership;
- (c) Other Indian person(s); and
- (d) If this order of preference cannot be met, then placement may be made with any person who has some knowledge of the child's tribal affiliation and the child's special needs.
- (e) All other persons.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.10.

§ 3240. Hearing Procedures.

- (a) An adoption hearing shall be held within ninety (90) days of receipt of an adoption petition from the prospective parent(s). The court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the court shall examine:
 - (1) The validity of written consent;
 - (2) A termination of parental rights order;
 - (3) The length of time of the child's wardship by the court;
 - (4) The special conditions of the child;
 - (5) The parent communication with the child;
 - (6) The minor's consent to adoption, if the child is over twelve (12) years of age;
 - (7) The home-studies or other reports, and;
 - (8) The order of preference of placement.
- (b) The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the court shall advise the party(s) of their basic rights as provided in § 3149 of this chapter. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this section have been met, enter a final decree of adoption, or may place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption.
- (c) If the court determines that the adoption will not be in the child's best interest, or finds that all of the requirements of this chapter have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this chapter.
- (d) Proceedings for the termination of the child-parent relationship and proceedings for adoption may be considered and determined at one (1) hearing provided that all the requirements of this subchapter (§§ 3231-3241) governing termination are complied with fully.
- (e) The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other person determined to be appropriate by the court shall be allowed in the proceedings.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.11.

§ 3241. Adoption Decree.

- (a) If the court finds that the requirements of this chapter have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered.
- (b) A person, when adopted, may take the name of the person adopting, and the two shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 26.12.

TITLE 9 - EDUCATION

Chapter

1. Consolidated Nay-Ah-Shing School Board

Section

1

CHAPTER 1

CONSOLIDATED NAY-AH-SHING SCHOOL BOARD

Section

- 1. Consolidated Nay-Ah-Shing School Board.
- 2. Membership and Voting.
- 3. Election of Members.
- 4. Terms of Office.
- 5. Eligibility for Board Membership.
- 6. Removal from Office.
- 7. Vacancies.
- 8. Power and Duties of the Nay-Ah-Shing School Board.
- 9. Education State of the Band Report and Needs Assessment.
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11. **Bylaws.**
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14. **Powers Reserved to Band Assembly.**
15. **Powers and Duties of Commissioner of Education.**
16. **Local Indian Education Committees.**
17. **Admission to Nay-Ah-Shing School.**
18. **Compulsory Attendance of School Age Pupils.**
19. **Obligations of the Nay-Ah-Shing School Board.**
20. **Bequests, Gifts, and Trusts.**
21. **Records.**
22. **Health.**
23. **Sectarian Materials or Teaching.**
24. **In Loco Parentis.**
25. **Office of Management and Budget.**
26. **Appropriations.**
27. **Veto Authority of Chief Executive.**
28. **Solicitor General.**
29. **Sovereign Immunity.**

Historical and Statutory Notes

The Introduction and Preamble to Band Ordinance 33-03 (this Chapter) provide: “This Education Ordinance represents the law pertaining to the Nay Ah Shing School Board. Prior Title 9 MLBS §§ 1-30 are repealed and replaced in their entirety by this Ordinance.”

“**PREAMBLE:** The Mille Lacs Band of Ojibwe Indians believes that its children are its most precious resource as they represent the future of the Band. In the quest to provide a quality education for their children, the Band recognizes that the Nay Ah Shing Schools require a School Board that is responsive to the needs of the children. It is the intent of this law to provide clear direction for the Nay Ah Shing School Board so that it may fulfill its mission to provide a quality education for the Mille Lacs Band of Ojibwe children.”

The Title of Band Ordinance 31-11 is “An Ordinance amending Title 9 of the Mille Lacs Band Statutes Annotated entitled Education in order to change the supervisory authority of the Nay-Ah- Shing School Board and to entrust the Commissioner of Education with the task of the day-to-day supervisory authority over all Education employees.”

The Preamble to Band Ordinance 31-11 provides: “The Band Assembly of the Mille Lacs Band of Ojibwe believes it is in the best interest of the Band to provide a quality education for the children. It is the intent of this law to provide clear direction to the School Board and to the Commissioner of Education so that they may fulfill the mission of providing a quality education for all children attending the Nay-Ah-Shing schools.”

Section I.1 of Band Ordinance 31-11 provides: “This Education Ordinance represents the law pertaining to the Nay-Ah-Shing School Board. Prior Title 9 MLBS §§ 8, 10, 15, 18, 19, and 28 are repealed and replaced by this Ordinance. Sections 29 and 30 are renumbered as Sections 28 and 29.”

Section I.2.(3) of Band Ordinance 31-11 provides in part: “Section 15 (**Powers and duties of**

Commissioner of Education) is amended to authorize the Commissioner with day-to-day supervisory authority over all Nay-Ah-Shing department employees.”

Section I.3 of Band Ordinance provides: “The amendments to Title 9 of the Mille Lacs Band Statutes Annotated are included as an attachment to this Bill and referenced as Exhibit A.”

The Title of Band Ordinance 68-12 is “An ordinance amending Section 18 of Title 9 (Education) of the Mille Lacs Band Statutes Annotated (MLBS) to allow the School Board to adjust the mandatory instructional days from 180 days to 175 days when necessary due to exigent circumstances.”

The Preamble to Band Ordinance 68-12 provides: “In is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 18 of Title 9 (Education) of the Mille Lacs Band Statutes Annotated.”

Section I.3 of Band Ordinance provides: “The amendments to Title 9 of the Mille Lacs Band Statutes Annotated are included as an attachment to this Bill and referenced as Exhibit A.”

The Title of Band Ordinance 68-12 is “An ordinance amending Section 18 of Title 9 (Education) of the Mille Lacs Band Statutes Annotated (MLBS) to allow the School Board to adjust the mandatory instructional days from 180 days to 175 days when necessary due to exigent circumstances.

The Preamble to Band Ordinance 68-12 provides: “In is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 18 of Title 9 (Education) of the Mille Lacs Band Statutes Annotated.”

§ 1. Consolidated Nay-Ah-Shing School Board.

A Commission to be known as the Nay Ah Shing school board is hereby chartered and authorized as an independent subdivision of the Executive Branch of tribal government with those powers as delegated by the Band Assembly.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 1.

§ 2. Membership and Voting.

The Consolidated Nay-Ah-Shing School Board shall be five-member board; with each member having the title of Board Member, with the exception of the leader whose title shall be Chairperson. Each Board Member shall have one vote at regular and special meetings with the exception of the Chairperson who shall vote in the case of a tie vote.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 2.

§ 3. Election of Members.

Each Board Member shall be elected, two from District I, one from District II and one from District III. The Chairperson shall be elected from an at large voting position.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 3.

§ 4. Terms of Office.

The term of office for each Board Member shall be four years. The positions will be staggered with two members (Districts I and III) being elected in June 1990, and every four years thereafter, and the Chairperson and two other members (Districts I and II) being elected in June, 1992, and every four years thereafter.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 4.

§ 5. Eligibility for Board Membership.

- (a) Any Board Members elected by the residents of a district or the Chairperson shall be an enrolled member of the Mille Lacs Band of Ojibwe Indians and at least twenty-one years as of the date of certification of candidates by the Joint Session.
- (b) Any Board Member elected or appointed must reside for at least one year prior to the primary election within the voter districts.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 5.

§ 6. Removal from Office.

Any Board Member may be removed from office for just cause as determined by 3 MLBS § 25.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 6.

§ 7. Vacancies.

- (a) In the event that a Board Member resigns or is removed as a Board Member or is otherwise unable to complete his/her term as a Board Member or there is otherwise a vacancy the vacancy shall be filled by appointment.
- (b) The District Representative from the District where the vacancy occurs shall provide the Chief Executive with the names of two eligible persons from which the Chief Executive shall nominate one person to fill the vacancy that is subject to ratification of the Band Assembly.
- (c) If a District Representative does not submit the names of two eligible persons to the Chief Executive within thirty (30) days of a vacancy, the Chief Executive shall appoint an individual to complete the term.
- (d) In the event that the vacancy occurs in the Chair position, the Chief Executive shall make the nomination that is subject to the ratification of the Band Assembly.
- (e) In the event the Chief Executive fails to nominate a person to fill a vacancy for the Chair position within thirty (30) days of a vacancy, the Secretary/Treasurer shall appoint an individual to complete the term.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 7.

§ 8. Powers and duties of the Nay-Ah-Shing School Board.

- (a) The Consolidated Nay-Ah-Shing School Board shall have power to establish educational policy for the benefit of Band members and non-Band members attending a Band school.
- (b) They shall prepare a uniform system of records for the Band's school(s).
- (c) They shall have general supervision over all Band 0-12 School Programs and shall establish policy for:
 - (1) approval of requests for any educational, scientific research;
 - (2) minimum criteria for passage to succeeding grades and graduation;
 - (3) appropriate student conduct and disciplinary procedures;
 - (4) any satellite/expanded services for Band 0-12 School Programs;

- (5) the preparation and authorization of educational grants and contracts related to all Band 0-12 School Programs; and
- (6) the implementation of rules and regulations for any Band 0-12 School education-related subject-matter statute.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 8.
Band Ordinance 31-11, § I.2.(1) and Exhibit A § 8.

§ 9. Educational State of the Band Report and Needs Assessment.

The Consolidated Nay-Ah-Shing School Board shall annually prepare an Educational State of the Band report to the Chief Executive and the Band Assembly no later than August 1 of each year and biannually conduct a needs assessment into all areas of its jurisdiction. By August 1 of each year, the Commissioner of Education and Na Ah Shing School Board shall concur on appropriate levels for academic achievement, culture and language, and staffing for the upcoming year.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 9.

§ 10. Hearings.

The Consolidated Nay-Ah-Shing School Board shall have the power to hold subject matter public hearings on education related topics.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 10.
Band Ordinance 31-11, § I.2.(2) and Exhibit A § 10.

§ 11. Bylaws.

The Consolidated Nay Ah Shing School Board shall adopt a set of bylaws establishing its rules of procedure and other internal governance matters within 90 days of passage of this Chapter. Said Bylaws shall be ratified by Band Assembly.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 11.

§ 12. Responsibility for Unacceptable Performance of Duties.

In exercising any powers granted, each Board Member shall not be immune from any responsibility that results from willful, knowledgeable and unacceptable performance of their duties.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 12.

§ 13. Meetings.

The Consolidated Nay-Ah-Shing School Board may meet up to twice a month with an agenda prepared in advance by the Chairperson. The Chairperson shall give at least twenty-four hour notice for any Special meetings.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 13.

§ 14. Powers Reserved to Band Assembly.

Any and all powers not specifically listed are reserved to the Band Assembly.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 14.

§ 15. Powers and duties of Commissioner of Education.

The Commissioner of Education shall have general and day-to-day supervisory authority over all Nay Ah Shing School department employees and the power and duty to:

- (a) attend regularly scheduled and special School Board Meetings;
- (b) negotiate and execute contracts with individuals and funding agencies of the United

- States or any private foundations for any education related matters;
- (c) exercise the day-to-day administration of all educational activities including supervisory authority over any and all Education employees;
 - (d) authorize the expenditure of all education funds under his/her jurisdiction, provide the School Board with a copy of each budget and notify the Board of all expenditures and budget modifications, and be accountable for the lawful disbursement of such funds;
 - (e) oversee the employment, discipline or termination of Education employees according to the policies set forth in the Mille Lacs Band Personnel Policy Manual;
 - (f) open or close school sessions for just cause;
 - (g) issue Commissioner's Orders on any subject matter within his/her jurisdiction pursuant to the authority conferred by Band statute;
 - (h) with the School Board, determine annual student achievement standards;
 - (i) report to School Board on matters of concern to the Board; and
 - (j) forward budget requests, in consultation with School Board.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 15.
Band Ordinance 31-11, § I.2.(3) and Exhibit A § 15.

§ 16. Local Indian Education Committees.

All local Indian Education Committees shall be disbanded with powers transferred to the Nay-Ah-Shing School Board upon the date of enactment of this Chapter. Authorities granted by the Mille Lacs Reservation Business Committee to said Committees are hereby revoked and rescinded.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 16.

§ 17. Admission to Nay-Ah-Shing School.

All schools under the jurisdiction of the Band which are supported by Band revenue or any funds of the United States shall admit any enrolled member of the Band who is of school age and has

not been expelled from any other school for violation of federal law. Notwithstanding the provision of any law to the contrary, the conduct of all pupils attending a Band sanctioned school shall be governed by a single set of reasonable rules and regulations established by the School Board. The School Board shall establish a single set of reasonable admission standards that shall contain uniform minimum school age entrance requirements.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 17.

Band Ordinance 31-11, Exhibit A § 17.

§ 18. Compulsory Attendance of School Age Pupils.

- (a) Every child between the chronological age of six (6) and sixteen (16) years of age shall attend a Band School or Public School of the State of Minnesota, during the entire time that the school is in session during the school year. Nay-Ah-Shing School shall be in session no less than one hundred and eighty (180) instructional days unless exigent circumstances arise. In that case, at the discretion of the School Board and with the approval of the Band Assembly, the school session may be for no less than one hundred and seventy-five (175) instructional days.
- (b) Any student between sixteen (16) and eighteen (18) years of age seeking to withdraw from school, must have his/her parent or guardian: (1) attend a meeting with school personnel to discuss the educational opportunities available to the student, including alternative educational opportunities; and (2) the student's parent or guardian must sign a written election giving permission for the minor child to withdraw from school.
- (c) It shall be the duty of the School Board or its designee to determine the legitimacy of all absences from the school for any pupil. Excuses for any absence shall be determined from uniform standards as established by the School Board.
- (d) The School Board or its designee shall by registered mail notify the parents or guardians of any pupil who is unexpectedly absent from school. On the fifth day of any unexcused absence from school per quarter, the School Board shall by registered mail notify the parents or guardians to appear before the School Board for a formal hearing to discuss the matter. Upon the continuation of unexcused absences or upon failure of the parents or guardians to appear before the School Board, the School Board shall request that the appropriate Social Services agency file a civil complaint (Child Protection Petition) in a court of competent jurisdiction.
- (e) Any person who is found guilty of civil violations of this section shall be subject to a fine not to exceed One Hundred (\$100.00) Dollars and no/100. Continued civil violations shall subject the parent or guardian to contempt of court and an additional fine.

- (f) For purposes of this section, parents or legal guardians shall be deemed liable for the truancy of minors who are under their direct supervision in the Court of Central Jurisdiction or any court of competent jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 18.
Band Ordinance 31-11, § I.2.(4) and Exhibit A § 18.
Band Ordinance 68-12. § I.

§ 19. Obligations of the Nay-Ah-Shing School Board.

The Nay-Ah-Shing School Board shall have the following duties and obligations under this Chapter:

- (a) to establish rules relating to qualifications of essential personnel, course of study or training, methods of instruction and training, size of classroom, equipment, supervision of pupils, parent consultation and any other rules or standards within its statutory authority;
- (b) to provide a free education to all children attending any Band 0-12 School;
- (c) to furnish free textbooks to all pupils;
- (d) to establish a cultural and language educational program;
- (e) to ensure that each student can converse in the native language of Ojibwe upon high school graduation;
- (f) to establish curriculum to incorporate Band history as well as the history of other tribes in the United States;
- (g) to establish curriculum to incorporate an understanding of the Band government structure;
- (h) to establish college preparatory classes in the high school; and
- (i) to establish curriculum to teach personal financial information and economics to students.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 19.
Band Ordinance 31-11, § I.2.(5) and Exhibit A § 19.

§ 20. Bequests, Gifts, and Trusts.

The School Board may receive, for the benefit of Indian children in any Band educational program, bequests, donations or gifts for any proper purpose and apply the same to the purpose designated.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 20.

§ 21. Records.

The School Board shall keep records of all meetings and all transcripts thereof. Such records shall be prima facie evidence of the facts therein stated. They shall also keep records of student achievement, attendance and related issues. All such records shall be private and confidential and shall only be disclosed pursuant to a confidentiality policy adopted by the School Board

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 21.

§ 22. Health.

The School Board shall establish a policy for physical examinations for all pupils enrolled at Band 0-12 grade schools. Employees of the School Board shall show freedom from contagious diseases in accordance with rules established by the Coordinator of Health Services. The Coordinator of Health Services shall be the Nurse Practitioner/ Community Health Nurse at Ne-ia-shing Clinic. The Commissioner of Health & Human Services in conjunction with the School Board shall be responsible for the development of all health related rules, regulations and policies for the 0-12 grade school programs. The School Board shall adopt any such rule, regulation or policy recommended by the Commissioner of Health & Human Services unless they find compelling cause to reject such rule, regulation or policy.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 22.

§ 23. Sectarian Materials or Teaching.

The School Board shall ensure that sectarian materials of any type are not provided to pupils that

promote beliefs inconsistent with the cultural laws and traditions of the Band. They shall further ensure that all Band 0-12 grade school programs remain free of sectarian beliefs and political activism of any kind.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 23.

§ 24. In Loco Parentis.

The School Board shall not assume parental rights for any child while such child is in attendance at Band school. Corporal punishment shall not be permitted as a form of discipline in any policy adopted by the School Board.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 24.

§ 25. Office of Management and Budget.

The Office of Management and Budget shall retain financial responsibility for the general books of account for all education-related funds of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 25.

§ 26. Appropriations.

The Band Assembly shall retain appropriation authority over all education-related funds. As required by Band Ordinance 23-99, appropriation requests shall be prepared on a biennial basis and forwarded to the Chief Executive for submission to the Band Assembly no later than September 1 of each odd-numbered year.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 26.

§ 27. Veto Authority of Chief Executive.

The Chief Executive may veto any official action of the School Board within five business days of receipt of any such policy, rule or regulation with concurrent ratification of such veto by the Band Assembly within ten business days. In the event of the Band Assembly's refusal to ratify any such veto, said action of the School Board shall be implemented. If the Band Assembly concurs with the Chief Executive's veto, the official action of the School Board shall fail to take effect. Upon receipt of notice of any such Executive veto, the Chairperson of the School Board shall appear before the Band Assembly to justify the School Board's official action to the Band Assembly. Such justification shall be submitted in writing at least one day before formal oral hearing before the Band Assembly.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 27.

§ 28. Solicitor General.

- (a) The Solicitor General shall represent the interest of the School Board and matters before the Court of Central Jurisdiction with the exception of those issues in which the interests of the Band override the interest of the School Board.
- (b) Should there be any doubt as to the proper interpretation of any part of this Chapter, the Commissioner of Education shall submit such question to the Solicitor General, who should issue a written opinion thereon.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 29.
Band Ordinance 31-11, § I.2.(6) and (7).

§ 29. Sovereign Immunity.

Nothing in this Chapter shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians in any State or Federal Court of competent jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 33-03, § 30.
Band Ordinance 31-11, § I.2.(8).

TITLE 10 - CULTURAL RESOURCES

<u>Chapter</u>	<u>Section</u>
1. Historical Preservation	1
2. Protection of Burial Grounds	1001
3. Archives	2001
4. Cemeteries	3001

Historical and Statutory Notes

The Preamble to Band Statute 1072-MLC-23 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians, in order to exercise a more effective form of tribal government to regulate the cultural resources of the Mille Lacs Band of Chippewa Indians."

Band Statute 1072-MLC-23, Title I. § 19 provides: "Section 19. Severability. If any provision of this Statute or its application to any person or circumstance is held to be invalid, the remainder of this Statute or the application of the provision to other persons or circumstances shall not be affected."

The Title of Ordinance 41-16 is "An Ordinance establishing the Mille Lacs Band of Ojibwe Cemetery Association and Regulation of Cemetery under Mille Lacs Band Statute, Chapter 4 §§ 3001-3012 of Title 10 – Cemeteries, pursuant to legislative process articulated in 3 MLBS §16."

The Preamble for Ordinance 41-16 provides "Be it enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of adding Chapter 4 §§ 3001-3012 of Title 10 entitled "Cemeteries" to establish the Mille Lacs Band of Ojibwe Cemetery Association and Regulation of Cemetery.

CHAPTER 1

HISTORICAL PRESERVATION

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	1
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SUBCHAPTER 1

GENERAL PROVISIONS

Section

1. Title.
2. Legislative Findings-Federal Laws Preemption.
3. Definitions.
4. Nondisclosure.
5. Cultural Items Presently Used.

§ 1. Title.

This title shall be known as the Mille Lacs Band of Chippewa Indians Cultural Resources Protection Statute.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 1.

§ 2. Legislative Findings-Federal Laws Preemption.

(a)

- (1) Under the federal Archaeological Resources Protection Act of 1979, 16 U.S.C. 470cc(c), the federal officials must notify the Mille Lacs Band of Chippewa Indians whenever a permit application is being considered which might adversely affect any religious or cultural off-reservation site.
- (2) Under the Federal Archaeological Resources Protection Act, 16 U.S.C. 470cc(g)(2), no federal permit for excavation or removal of any archaeological resource located within the jurisdiction of the Mille Lacs Band of Chippewa Indians can be issued without the consent of the Band.
- (3) There can be no exchange or disposition of archaeological resources from the Mille Lacs Band of Chippewa Indians without the consent of the Band pursuant to the federal Archaeological Resources Protection Act, 16 U.S.C. 470dd.
- (4) The National Historic Preservation Act, 16 U.S.C. § 470 et seq., declares a national policy to work in partnership with Indian tribal governments to protect cultural resources and provides a mechanism by which tribal

governments may carry out the provisions of that Act (16 U.S.C. § 471, 470a(c)).

- (5) The Band Assembly finds that an orderly procedure must be established for considering the acting upon such notifications, requests, and review functions.

(b)

- (1) The National Historic Preservation Act does not confer upon state governments the power to nominate sites within Indian reservations to the National Register.
- (2) The Band Assembly finds that the power to make such nominations to the National Register must be exercised by the Mille Lacs Band of Chippewa Indians and that an effective procedure must be established to carry out this activity.
- (3) The Band Assembly hereby declares its intent to preempt the field of nominations to the National Register of archaeological and historical sites located with the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 2.

§ 3. Definitions.

As used in this chapter, the following words and phrases shall each have the designated meaning, unless a different meaning is expressly provided for, or from the context a different meaning is clearly indicated.

- (a) **"Archaeological Resources"** means any remains of the past human life or activities which are of archaeological or historical interest. Such material remains shall include, but not limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, talus slide depressions, cairns, graves, human skeletal remains, or any portion or piece of any of the foregoing items. The material or remains may also include non-fossilized or fossilized paleontological specimens, or any portion or piece thereof, whether or not found in an archaeological context. No item shall be treated as an archaeological or historic resource unless such an item is at least fifty years of age.
- (b) **"ARPA"** means the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa et seq.

- (c) **"Band's Register of Historic and Archaeological Properties"** means the tribal register of districts, sites, buildings, structures and objects significant in tribal history, architecture, archaeology or culture, as determined by the Board and maintained by the Department.
- (d) **"Board"** means the Federation Cultural Resources Board.
- (e) **"Department"** means the Federation of Archaeological and Historical Programs.
- (f) **"Effect"** means any condition of the undertaking that causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualify the property to meet the criteria of the Band's Register or the National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance in accordance with the Band's Register or the National Register criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are foreseeable. Such effects may include changes in the pattern of land use, population, density or growth rate that may effect any properties of historical, architectural, archaeological, or cultural significance.
- (g) **"Historic property"** means any prehistoric or historic district, site, building, structure of object significant in tribal history, architecture, archaeology, culture or religion. The term includes all artifacts, records, remains and reburial sites designated by the Federation Cultural Board.
- (h) **"National Register"** means the National Register of Historic Places.
- (i) **"NHPA"** means the National Historic Preservation Act of 1966, 16 U.S.C. § 470 et seq.
- (j)
 - (1) **"Undertaking"** means any governmental, governmentally assisted or licensed action, activity or program or the approval, sanction, assistance, or support of any non-governmental action, activity or program. Undertakings include new and continuing projects and program activities that are
 - (i) directly undertaken by government agencies;
 - (ii) supported in whole or in part through governmental contracts, grants, subsidies, loans, loan guarantees or other forms of direct or indirect funding assistance;

- (iii) carried out pursuant to a governmental lease, permit, license, certificate, approval or other form of entitlement or permission; or,
 - (iv) proposed by a Federal, State or other governmental agency for legislative authorization or appropriation.
- (2) Site-specific undertakings affect areas and properties that are capable of being identified at the time of approval by the governmental agency.
- (3) Non-site-specific undertakings have effects that can be anticipated on Band's Register or National Register and eligible properties but cannot be identified in terms of specific geographical areas or properties at the time of approval. Non-site-specific undertakings include Federal or State approval of Federal or State plans pursuant to legislation, development of comprehensive or area wide plans, agency recommendations for legislation and the establishment or modification of regulations and planning guidelines.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 3.

§ 4. Nondisclosure.

Information concerning the nature and location of any archaeological resource or historic property may not be made available to any person unless the Director determines that such disclosure would further the purposes of the statute and would not create an undue risk of harm to such resources or the site at which such resources are located. The Department and the Board are authorized to withhold from disclosure information relating to the location of sites of objects listed on the Bands Register or the National Register upon a determination that the disclosure of specific information would create a risk of destruction or harm to such sites or objects.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 14.

Cross References

Comprehensive survey, *see* 10 MLBS § 501.

§ 5. Cultural Items Presently Used.

In relationship to the protection of conservation of Historical or Archaeological resources, there is no authority granted by this title that would allow the Band or the Department to take, regulate

or preserve any item of traditional Ojibwe religion or culture that is presently being used or has been used by members of the Mille Lacs Band of Chippewa Indians without the written approval of the owner, keeper or the appropriate religious leaders who are concerned with the said article.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 18.

SUBCHAPTER 2

FEDERATION CULTURAL RESOURCES BOARD

Section

- 101. Establishment of Federation Cultural Resources Board; Membership.**
- 102. Officers.**
- 103. Quorum.**
- 104. Meetings.**
- 105. Principal Office.**
- 106. Oath of Office.**
- 107. Powers and Duties of the Board; Undertakings Off-Reservation.**
- 108. Undertakings On-Reservation.**
- 109. Disposition of Archaeological Resources.**
- 110. Governmental Rulemaking.**
- 111. Regulation by Board.**
- 112. Annual Reports.**
- 113. Records.**
- 114. Cooperation with Agencies and Organizations.**
- 115. Comprehensive Plan; Board Review.**
- 116. Band's Register; Review of Nominations.**
- 117. National Register; Review of Nominations.**
- 118. Education.**
- 119. Review by Court of Central Jurisdiction.**

§ 101. Establishment of Federation Cultural Resources Board; Membership.

The Board shall be composed of the Director of the Cultural Department, the Chairperson of the Elderly Advisory Board, the Commissioner of Natural Resources Department, a Band archaeologist, and Band staff attorney designated by the Chief Executive.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 4.

§ 102. Officers.

The Board shall elect from among its members a Chairperson, a Vice-Chairperson and a Secretary. In the absence of the Chairperson the Vice-Chairperson shall preside, and in the absence of both the Chairperson and Vice-Chairperson, the Secretary shall preside.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 4.01.

§ 103. Quorum.

Four members of the Board shall constitute a quorum. The Chairperson will vote only in the event of a tie.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 4.02.

§ 104. Meetings.

Meetings of the Board shall be held at quarterly intervals. Emergency meetings may be held upon twelve hours actual notice, and business may be transacted, provided that not less than a majority of the full Board concurs in the proposed action.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 4.03.

§ 105. Principal Office.

The principal office of the Board shall be the Mille Lacs Government Center.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 4.04.

§ 106. Oath of Office.

Each member of the Board shall take the following oath before beginning his duties:

"I promise to faithfully execute all provisions of the Federation Cultural Resources Protection Ordinance and any regulations promulgated in furtherance thereof, and to be bound by the Mille Lacs Statutes, the jurisdiction of the Court of Central Jurisdiction and the Mille Lacs Band and to otherwise faithfully perform my duties as outlined by the law."

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 4.05.

Cross References

Oath for Band offices, *see* 5 MLBS § 115.

Official oath of office, *see* 2 MLBS § 8.

§ 107. Powers and Duties of the Board; Undertakings Off-Reservation.

The Board is empowered to participate in the review of permitting process where a federal or state officer has or should notify the Band pursuant to ARPA, 16 U.S.C. § 470cc(c), the NHPA, or the American Indian Religious Freedom Act, 42 U.S.C. § 1996, that an undertaking is proposed or an application is being considered for a permit which might adversely affect any off-reservation archaeological resource or historic property.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.

§ 108. Undertakings On-Reservation.

The Board is authorized and directed to review any proposed undertaking that might adversely affect any on-reservation archaeological resource of historic property included on or eligible for inclusion on the Band's Register or the National Register. The Board is also empowered to consider requests for consent to on-reservation excavation or removal of archaeological resources as an initial application or as referred by officials acting pursuant to ARPA, 16 U.S.C. § 470cc(g)(2), the NHPA, or the American Indian Religious Freedom Act. (42 U.S.C.A. § 1996.)

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.01.

§ 109. Disposition of Archaeological Resources.

The Board is empowered to consider requests for exchange or dispositions of archaeological resources (see 16 U.S.C. § 470dd) and to determine what conditions, if any, should be attached if consent is given.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.02.

§ 110. Governmental Rulemaking.

As directed by the Chief Executive, the Board is empowered to initiate, comment and participate in federal, state or other governmental rule making processes concerning matters pertaining to its expertise (see 16 U.S.C. §§ 470s, 470ii).

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.03.

§ 111. Regulation by Board.

For the purpose of carrying into effect the provisions of this title or of supplying any deficiency therein, the Board may make such regulations not inconsistent with the spirit and intent of this title as are deemed necessary or advisable. All such regulations shall have the same force and effect as if incorporated in this title.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 16.

§ 112. Annual Reports.

The Board shall prepare a comprehensive annual report for submission to the Chief Executive, which shall report on the activities carried out under the provisions of this title, and shall make such recommendations as the Board deems appropriate as to changes or improvements needed in the provisions of this title. Such report shall include a summary of actions undertaken by the Board in reviewing proposed undertakings, applications for excavation or removal permits, and nominations for the Band's Register and the National Register.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.04.

§ 113. Records.

The Board shall maintain records of its proceedings. All proceedings shall be documented in writing, to be distributed to the Band Assembly not more than five days following a meeting.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.05.

§ 114. Cooperation with Agencies and Organizations.

The Board is authorized and directed to consult and cooperate, to the extent feasible, with other Tribal and non-Tribal government departments and agencies, and with private organizations involved in historical and archaeological protection activities, including the National Trust for Historic Preservation, the Inter-National Center for the study of Preservation and Restoration of Cultural Property, museums and organizations of professionals. Cooperation activities shall include providing assistance to other agencies and organizations, and coordinating the planning and conduct of historic preservation programs.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.06.

§ 115. Comprehensive Plan; Board Review.

The Board is authorized and directed to review the comprehensive Reservation-wide archaeological and historic preservation plan prepared by the Department. The Board is further authorized to approve the plan and submit it to the Chief Executive or to direct the Department to change the plan until it met with its approval.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.07.

Cross References

Comprehensive plan, *see* 10 MLBS § 502.

§ 116. Band's Register; Review of Nominations.

The Board is authorized and directed to review nominations of properties to the Band's Register submitted by the Department, and to approve those that qualify as significant in tribal history, architecture, archaeology, cultural, or religious sites.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.08.

Cross References

Band's Register, *see* MLBS §§ 401, 402.

Department powers and duties, nominations to Band's Register, *see* 10 MLBS § 202.

§ 117. National Register; Review of.

The Board is authorized and directed to review forms or reports proposing to nominate properties to the National Register, assure adequate public participation in the nomination process, and to recommend to the Chief Executive those properties it deems appropriate for nomination for listing on the National Register.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.09.

Cross References

National Register, *see* 10 MLBS §§ 403, 404.

Preparation by Department of nomination forms, *see* 10 MLBS § 203.

§ 118. Education.

The Board is authorized to develop and operate a program of information and education, for tribal members and/or the general public, concerning cultural resources and protection of properties listed on the Band's Register.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 5.10.

§ 119. Review by Court of Central Jurisdiction.

The Director, the Solicitor General, or any applicant or permittee aggrieved by any decision of the Board may petition the Court of Central Jurisdiction for a hearing to review such decision. A written notice of appeal must be filed with the Clerk of Court within twenty days of such adverse decision; provided, however, that such limitation period shall not apply to ban the petition of the Solicitor General or the Director of the Department where such would be contrary to the Band interest in preservation of archaeological resources or historic properties.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 17.

Cross References

Subject-matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

SUBCHAPTER 3

POWER AND DUTIES OF FEDERATION CULTURAL DEPARTMENT

Section

- 201. Powers and Duties.**
- 202. Nominations to the Band's Register.**
- 203. Nominations to National Register; Preparation of Forms.**
- 204. Assistance to Boards.**
- 205. Records and Salvage.**
- 206. Tribally-Owned Properties.**
- 207. Transfer of Property on Band's Register.**
- 208. Promotion of Preservation Efforts.**
- 209. Annual Report.**

§ 201. Powers and Duties.

The Federation Cultural Department shall have the duties and powers set out in this subchapter, which shall be in addition to such powers and duties provided by prior Statutes of the Mille Lacs Band of Chippewa as are not inconsistent with this title.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 6.

§ 202. Nominations to the Band's Register.

The department is directed to nominate to the Board all sites, buildings, districts and objects within the reservation that appear to qualify for listing on be Band's Register. The Department shall, in order to compile the information needed to make the nominations:

- (a) Conduct a comprehensive survey of all historic properties on the reservation pursuant to 10 MLBS § 501.
- (b) Compile an inventory that includes basic information about the location and history of each property.
- (c) Evaluate each property surveyed with regard to its historic, archaeological, anthropological, religious and cultural significance.
- (d) Based on the evaluation described in subsection (c), place each surveyed property into one of four categories of significance.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 6.01.

Cross References

Band's Register, *see* 10 MLBS §§ 401, 402.

Board review of nomination, *see* 10 MLBS § 116.

§ 203. Nominations to National Register; Preparation of Forms.

The Department shall prepare nominations forms for those properties that appear to be eligible for placement on the National Register, and present them to the Board.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.1, § 6.02.

Cross References

Board review of nominations, *see* 10 MLBS § 117.

National Register, *see* 10 MLBS §§ 403, 404.

§ 204. Assistance to Boards.

The Department shall assist and consult with the Administrative Policy Board and the Board on issues relating to the conservation of historic and archaeological resources and on other matters within the scope of their duties.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.1, § 6.03.

§ 205. Records and Salvage.

The Department shall initiate measures to ensure, at a minimum, that where a property listed on the Band's Register is to be substantially altered or affected, timely steps be taken to make or have made records, including measured drawings, photographs and maps of the property, and that a copy of records then be deposited in the tribal archives for future use and reference. The Department shall use its best efforts to assure adequate surveying testing, to salvage, analysis and duration of artifacts, where such is feasible.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.I, § 6.04.

§ 206. Tribally-Owned Properties.

The Department shall initiate measures and procedures to provide for the maintenance, preservation, rehabilitation or restoration, of tribally-owned and registered sites at professional standards prescribed by the Director of the Department.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.I, § 6.05.

§ 207. Transfer of Property on Band's Register.

The Department shall cooperate with purchasers and transferees of any property listed on the Band's Register in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in a unreasonable burden in the public interest.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.I, § 6.06.

§ 208. Promotion of Preservation Efforts.

The Department is authorized to take the following actions for the purpose of promoting historic preservation efforts:

- (a) Develop and make available to Band Agencies information concerning professional methods and techniques for identifying, preserving, stabilizing, improving, restoring and maintaining, archaeological and historic properties.
- (b) Advise Band agencies in the evaluation, identification, preservation, stabilizing, improvement, restoration and maintenance of historic and archaeological properties.
- (c) Encourage in cooperation with the Board, public interest and participation in archaeological and historic preservation.
- (d) Conduct studies in such areas as the adequacy of federal, state and band laws pertaining to archaeological and historic preservation activities.
- (e) Encourage training and education in the field of archeological and historic preservation.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.I, § 6.07.

§ 209. Annual Report.

The Department shall submit annually a comprehensive report of its activities and the results of its studies to the Chief Executive and the Board, and from time to time submit such additional and special reports as the Department deems advisable. These reports may propose such legislative enactments and other actions as, in the judgment of the Department, are necessary and appropriate to carry out its recommendations.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.I, § 6.08.

SUBCHAPTER 4

PERMITS

Section

- 301. Damaging or Adverse Effects: Prohibited Acts.**
- 302. Illegal Possession or Transfer of Archaeological or Historic Resources.**
- 303. Contents of Permit Application.**
- 304. Filing of Application.**
- 305. Criteria.**
- 306. Board Action.**
- 307. Terms and Conditions of Permit.**
- 308. Duration of Permit.**
- 309. Interim Permits.**
- 310. Duties of Permittees.**
- 311. Suspension and Revocation of Permits.**
- 312. Hearing.**
- 313. Emergency Stop Work Orders.**

§ 301. Damaging or Adverse Effects: Prohibited Acts.

No person shall excavate, remove, damage or otherwise alter, deface or adversely affect any archaeological resource or historic property unless such activity is pursuant to a permit duly issued under this title.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.I, § 7.

§ 302. Illegal Possession or Transfer of Archaeological or Historic Resources.

No person shall sell, purchase, exchange, transfer, transport, receive, possess or offer to sell, purchase or exchange any archaeological resource or historic property if such resource is excavated or removed from Reservation lands in violation of the prohibition contained in 10 MLBS § 301.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 7.01.

§ 303. Contents of Permit Application.

An application for a permit to excavate, remove, alter, damage, or otherwise adversely affect archaeological resources or historic properties from Reservation land shall include information concerning the time, scope, location and specific purpose of the proposed work, together with such other information as the Board deems necessary. Each application must be accompanied by a definite outline of the proposed work, indicating the name of the individuals or group making the request, the date proposed for beginning the work, the length of time proposed to be devoted to it and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation or gathering, the museum in which the collections made under the permit are to be permanently preserved, and, where such museum is off-reservation, the length of time proposed by the application before such collections are to be returned to the reservation. The application must be accompanied by a sketch plan and a legal description of the particular site or area to be affected, so definite that it can be located on a map with accuracy. Each application shall be signed by the applicant and verified on oath or affirmation, and shall contain the promise of the applicant to abide and be bound by all of the provisions of this title and by all other Band laws.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.I, § 8.

Cross References

Archaeological research methodology, *see* Nat. Res. Comm. Order 157-92.

§ 304. Filing of Application.

Each application for a permit must be filed with the Board and the director of the Cultural Department.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 8.01.

§ 305. Criteria.

A permit may be issued pursuant to an application submitted in strict accordance with 10 MLBS §§ 303 and 304, if the Board determines that:

- (a) The applicant has demonstrated its qualifications to carry out the proposed activity by submitting to the Board references and a resume showing prior successful experience in archaeological field work, site surveying, excavation techniques and reporting;

- (b) Adequate mitigation efforts are guaranteed that will avoid any adverse effect on properties included on or eligible for inclusion on the Band's Register or the National Register, or that acceptance of an adverse effect on such properties is clearly in the Band's best interest;
- (c) The archaeological resources or historic properties which are excavated or removed will remain the property of the Band; and,
- (d) The activity pursuant to such permit is not inconsistent with any management plan applicable to the lands concerned.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 8.02.

Cross References

Band's Register, *see* 10 MLBS §§ 401, 402.

National Register, *see* 10 MLBS §§ 403, 404.

§ 306. Board Action.

The Board shall allow the department a reasonable opportunity to comment on each application for a permit. The board shall make its decision to issue or deny a permit within six months after the date the application was filed; Provided, however, that the Board may make a unlimited number of three month extensions of such review period upon providing the applicant with a written explanation of the factors requiring such an extension. Applicants shall be notified of Board action by certified mail.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.I, § 8.03.

§ 307. Terms and Conditions of Permit.

Any permit may contain such terms and conditions that the Board deems necessary to carry out the purposes of this title. Each permit shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this title and other laws applicable to the permitted activity. The permit may contain provisions requiring restoration of the site of its former condition. Every permit shall be issued in the name of the applicant therefore, and no permit shall be transferable; nor shall the holder of any permit allow

any other person to use the permit. The Board may require that a bond be posted as a prerequisite to issuance of a permit.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 8.04.

§ 308. Duration of Permit.

Each permit shall be effective for three years from the date of its issuance or for such shorter period as may be specified therein. The terms of each permit may be extended on order of the Board for proper cause upon finding that the work has been diligently prosecuted under the permit. Failure to begin work under a permit within six weeks after it is granted, or failure to diligently prosecute such work after it has begun, shall make the permit void without any order or proceeding by the Board.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.1, § 8.05.

§ 309. Interim Permits.

Persons who received approval from the Board to excavate or adversely affect any archaeological resource or historic property prior to the date of enactment of Band Statute 1072-MLC-23 may receive an interim permit to continue work during the period that their application for a permit is pending before the Board, under the following procedure:

- (a) Within thirty days after the date of enactment of Band Statute 1072- MLC-23, such person shall file with the Board a declaration, stating the time approval was received, the location of the property the purpose of the work, and the work done. The declaration shall be accompanied by an application for a permit.
- (b) Upon filing of the declaration and the application, the Board shall issue an interim permit. The Department shall determine whether the alleged authority to affect the property was validly obtained, the Board shall revoke the interim permit.
- (c) Such interim permit shall be in effect until the Board approves or denies the application for the permit.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T.1, § 8.06.

§ 310. Duties of Permittees.

During the course of the undertaking, each permittee shall report monthly and quarterly to the Board. Monthly reports shall contain a brief summary statement of the work performed during the month, and quarterly reports shall contain a catalog of collections and photographs made during the quarter. Each permittee shall cooperate fully with any and all inspections conducted by the Department or the Board. No part of any collections shall leave the reservation unless the express written consent of the Board has been given in the form of a Temporary Removal License. Such license shall at all times accompany the artifacts while off the reservation.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 9.

§ 311. Suspension and Revocation of Permits.

Any permit issued under this chapter may be suspended or revoked by the Board in accordance with the procedures set forth in 10 MLBS §§ 312 and 313, upon determination:

- (a) That the permittee has violated any provision of the permit, this title, or other applicable law;
- (b) That relevant circumstances have changed since the granting of the permit so that the application would no longer meet the criteria of 10 MLBS § 305;
- (c) That material misrepresentations were contained in the application; or
- (d) That the permit was improvidently granted.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 10.

§ 312. Hearing.

Upon written notice specifying the alleged grounds for revocation for suspension, filed with the Board by the Chairperson or the Director of the Department, the Board shall schedule a hearing to determine the matter, which hearing shall not be less than five days nor more than thirty days after the service of such notice upon the permittee. The permittee shall be entitled to an opportunity to appear at such hearing and controvert the allegations in support of revocation or suspension.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 10.01.

§ 313. Emergency Stop Work Orders.

Upon finding that a delay in suspending or revoking a permit for the period required by a hearing would be contrary to the Band's interest in preserving archaeological or historic properties, the Board may issue a written stop work order, directing the permittee immediately to cease and desist all excavation, removal or other activity pursuant to the permit. It shall be unlawful for any person to disobey a stop work order. In all cases where a stop work order has been issued, the Board shall immediately schedule a hearing to determine the matter, which hearing shall not be less than two days nor more than ten days after the date of the stop work order, unless continued by the Board upon motion of the permittee.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 10.02.

SUBCHAPTER 5

REGISTERS

Section

- 401. Band's Register of Archaeological and Historic Properties; Nomination and Acceptance.**
- 402. Band's Undertakings Upon Property Listed in Band's Register.**
- 403. National Register; Nomination of Reservation Properties.**
- 404. Band Undertakings Upon Properties Listed in National Register.**

§ 401. Band's Register of Archaeological and Historic Properties; Nomination and Acceptance.

There is hereby established a Band's Register of Cultural Properties, which shall be a register of prehistoric or historic districts, sites, building, structures and objects significant in tribal history, architecture, archaeology, culture or religion. Nominations at the Band's Register may be made by any person. Acceptance or rejection of any nomination shall be made by the Board.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 11.

Cross References

Board review of nominations, *see* 10 MLBS § 116.

Department powers and duties, nominations to Band's Register, *see* 10 MLBS § 202.

§ 402. Band's Undertakings Upon Property Listed in Band's Register.

Whenever the Mille Lacs Band has direct or indirect jurisdiction over a proposed Band or Band assisted undertaking, or has authority to license or permit any undertaking, the Board shall, prior to the approval of the expenditure of any Band funds on the undertaking or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object that is included or eligible for inclusion in the Band's Register. The Board and the Director shall be afforded a reasonable opportunity to comment with regard to such undertaking.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 11.01.

Cross References

Permit criteria, adverse effects on properties, *see* 10 MLBS § 305.

§ 403. National Register; Nomination of Reservation Properties.

Nomination of any district, site, building, structure, or object located within the Reservation for inclusion in the National Register shall be made by the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 12

Cross References

Board review of nominations, *see* 10 MLBS § 117.

Preparation of nomination forms by Department, *see* 10 MLBS § 203.

§ 404. Band Undertakings Upon Properties Listed in National Register.

Whenever the Chief Executive has direct or indirect jurisdiction over a proposed Band or Band-assisted undertaking or has authority to license any undertaking, the Board shall, prior to the approval of the expenditure of the Band funds on the undertaking or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object within the Reservation that is included in or eligible for inclusion in the National Register. The Board and the Director shall be afforded a reasonable opportunity to comment with regard to such undertaking.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 12.01.

Cross References

Permit criteria, adverse effects on properties, *see* 10 MLBS § 305.

SUBCHAPTER 6

SURVEY AND COMPREHENSIVE PLAN

Section

501. Comprehensive Survey.

502. Comprehensive Plan.

§ 501. Comprehensive Survey.

A comprehensive Reservation-wide survey of archaeological and historical properties shall be conducted by the Director of the Department and submitted to the Board. The long-range objective of the comprehensive survey shall be the identification, protection and preservation of all archaeological resources, districts, sites, buildings, structures and objects within the Reservation that are potentially significant to tribal history, architecture, archaeology, culture or religion. The survey shall be conducted in as timely a manner as possible and shall encompass all historic properties and archaeological resources, regardless of title, boundaries or ownership. Survey data shall be maintained by the Department in an accessible location and shall be kept up

to date so that information is readily available to Band planners during the decision-making process. The survey data need not be published but shall be physically organized and indexed in a manner to provide for easy access. Availability of survey data to the general public may be limited if, in the opinion of the Department such availability might result in damage to archaeological resources or historic properties. An end result of the overall survey process is nomination of property significant to Band history, architecture, archaeology, culture or religion to the Band's Register or the National Register.

Historical and Statutory Notes

Source: Band Statute 1072-MLC-23, T. I, § 13.

Cross References

Department powers and duties, nominations to Band's Register, *see* 10 MLBS § 202.

Nondisclosure, *see* 10 MLBS § 4.

Registers, *see* 10 MLBS § 401.

§ 502. Comprehensive Plan.

A comprehensive Reservation-wide archaeological and historic preservation plan shall be prepared by the Department and submitted to the Board. The plan shall consist of a report or series of reports on the Reservation archaeological and historic preservation program. These reports shall describe, analyze and make future projections about the program. The archaeological and historic preservation plan shall include an explanation of the philosophy or rationale behind the program components, a report on the current status of each component, an evaluation of the effect of each component, and the projection of future plans.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 13.01.

Cross References

Board review and approval of comprehensive plan, *see* 10 MLBS § 115.

SUBCHAPTER 7

ENFORCEMENT

Section

601. Prohibited and Required Acts.

602. Criminal Offenses.

603. Civil Penalties.

Cross References

Protection of burial grounds, violations, *see* 10 MLBS § 1003.

§ 601. Prohibited and Required Acts.

It shall be unlawful and prohibited for any person to do any act the performing of which is prohibited under this chapter or to fail to do any act the performance of which is required under this chapter.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 15.

§ 602. Criminal Offenses.

The procedure established for criminal offenses under the Mille Lacs Statutes shall be utilized for violations of this chapter committed by persons subject to tribal criminal jurisdiction. In the event that the defendant pleads guilty or is found guilty of committing an offense, the Court may impose all or any of the following penalties:

- (a) A fine of not less than \$10.00 or more than \$500.00;
- (b) A jail term of not less than one day nor more than six months;
- (c) Forfeiture of any articles seized by reason of illegal activities prohibited by this chapter, under the procedures established by statute.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 15.01.

Cross References

Criminal procedure, *see* 24 MLBS § 4000.

§ 603. Civil Penalties.

The Mille Lacs Band may bring an action for a civil penalty against any person who is alleged to have engaged in an activity which is violative of this chapter, including any person who is not subject to Band criminal jurisdiction. The Band also may bring an action for forfeiture of any articles possessed in violation of this chapter. Such civil penalty and forfeiture actions shall be brought under the procedures established in the Civil Law Statute. Any person violating the provisions of this chapter shall be subject to exclusion from the Reservation under 2 MLBS § 201 [Digitizer's note: section not in digital copy] et seq. Such relief as may be fashioned by the Court shall be intended to be remedial in nature and not punitive and should compensate the Band for the damage done to the archaeological or historic resources of the Reservation and its archaeological and historic resources. Such relief shall also be intended to coerce the individuals into obeying this chapter and regulations promulgated hereto and not to punish such individuals for violation of this chapter and such regulations. Search, seizure and forfeiture of articles possessed in violation of this chapter shall be pursuant to 1 MLBS § 1 et seq. The Court may also order the forfeiture of any bond, the revocation of any permits, the return of any property which has been removed from the Reservation or the restoration of any archaeological resources or historic property to its former or customary condition. In assessing civil penalties, the court may consider as factors the archaeological or commercial value of the resources involved, or the cost of restoration and repair of the resource and the archaeological or historic site involved.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. I, § 15.02.

Cross References

Due process of law, *see* 1 MLBS § 8.

Unreasonable searches and seizures, *see* 1 MLBS § 2.

CHAPTER 2

PROTECTION OF BURIAL GROUNDS

Section

1001. Definitions.

1002. Permits.

1003. Violation; Penalties.

1004. Force and effect of chapter.

1001. Definitions.

The Mille Lacs Reservation Band of Chippewa Indians hereby establishes that the following definition of terms be utilized when interpreting this chapter.

- (a) An **"artifact"** is defined as
 - (1) "a usually simple object (as a tool or ornament) showing human workmanship or modification;
 - (2) "a product of civilization;
 - (3) "a product of artistic endeavor
- (b) A **"burial ground"** is defined as "the site or location whereupon there has been performed the act or process of burying".
- (c) A **"cemetery"** is defined as "burial place; a burial ground".
- (d) **"Historic"** is defined as "of or relating to times or events of written history".
- (e) **"Indian"** is defined as "(American Indian) a member of any of the aboriginal peoples of the western hemisphere".
- (f) A **"monument"** is defined as a "burial vault; a memorial stone or a building erected in remembrance of a person or event."
- (g) **"Prehistoric"** is defined as "of or relating to times or events of written history".
- (h) A **"ruin"** is defined as "the remains of something destroyed".

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. III, § 1.

§ 1002. Permits.

Permits for the examination of ruins, burial grounds, cemeteries, the excavation of archaeological sites and the gathering of objects of antiquity upon the lands under the jurisdiction of the Mille Lacs Band of Chippewa Indians may be granted by the Mille Lacs Reservation Business Committee to institutions or persons which they may deem properly qualified to conduct such examinations, excavation or gathering, subject to such rules and regulations as they may prescribe.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. III, § 2.

§ 1003. Violation; Penalties.

- (a) Any person who shall appropriate, excavate, injure or destroy any Indian cemetery, Indian burial mound or burial ground, historic or prehistoric ruin or monument, or any object of antiquity situate on lands owned or controlled by the Mille Lacs Band of Chippewa Indians or under their jurisdiction without the written permission of the Mille Lacs Reservation Business Committee having jurisdiction over said lands within the boundaries of the Mille Lacs Indian Reservation, Minnesota, shall upon conviction be fined in the sum of not more than five hundred dollars (\$500.00) or imprisonment for a period not to exceed six (6) months or shall suffer both fine and imprisonment, in the discretion of the Court.
- (b) In addition to the above penalty, whosoever shall violate this chapter may be subject to civil suit for both actual damages plus punitive damages in the amount of five hundred dollars (\$500.00) by any aggrieved party. The Mille Lacs Reservation Business Committee shall be considered an aggrieved party and may sue any violator in the name of the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. III, § 3.

Cross References

Historical preservation, enforcement, *see* 10 MLBS § 601.

§ 1004. Force and Effect of Chapter.

Pursuant to the provisions of P.L. 280 (28 U.S.C. 1360), this chapter shall be given full force and effect in the determination of any civil cause of action brought in the Courts of the State of Minnesota.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. III, § 4.

CHAPTER 3

ARCHIVES

Section

- 2001. Purpose.**
- 2002. Archival Program.**
- 2003. Protection of Records.**
- 2004. Transfer of Records.**
- 2005. Archivist Access to Current Records.**
- 2006. Records Management.**
- 2007. Access to Records.**

§ 2001. Purpose.

The Federation Fund Archives, FFA, has been established for the purpose of preserving and making available for research materials which help to document the founding, development, organization, management and achievements of the Federation Fund. The collections also contain information on the Chippewa of the Mississippi (both before and after the formation of the FFA in 1855), and general information on Indian History and the history of Chippewa of the Mississippi. The records reflect the FFA dealings with government agencies, private foundations, the business community, fraternal and labor organizations, individual donors and members, and most importantly, treaties with the United States Government.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. II, § I.

§ 2002. Archival Program.

The Archivist shall collect, arrange, and describe the archival records of the FFA. They shall make available to qualified researchers all open archival record series.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23. T. II, § 2.

§ 2003. Protection of Records.

The Archivist shall protect the integrity of the records in their custody. They shall guard them against defacement, alteration, or theft; they shall protect them against physical damage by

excessive exposure to light, dampness, and dryness; and they shall ensure that their evidentiary value is not impaired in the normal course of rehabilitation, arrangement, and use.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. II, § 2.01.

§ 2004. Transfer of Records.

- (a) On behalf of the FFA the Archivist is authorized to receive all the noncurrent records of the organization.
- (b) Any record-creating division, department, or campaign area of the FFA is directed to release to the Archives for preservation and administration such records legally in its custody that no longer are needed for the transaction of the current business of the office, whenever the Archivist is well and able to receive and take possession of them.
- (c) The records of any division, department, or campaign area shall, prior to or upon the termination of the existence and functions of that office, be transferred to the custody of the Archives unless otherwise directed by the Archivist.
- (d) Since all records created by an employee in the performance of his or her duties legally are the property of the FFA, upon termination of employment all individuals shall transfer to the Archives those records no longer needed for the current operations of their respective offices. In no case shall anyone remove such records from the FFA Headquarters or the area offices, or destroy same without the prior permission of the Archivist.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, § 3.

§ 2005. Archivist Access to Current Records.

The Archivist shall have the right of reasonable access to and examination of all current FFA records.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. II, § 3.04.

§ 2006. Records Management.

The Archivist, together with the Executive Director, Assistant Executive Director, Secretary of the Corporate, and the several division and department heads, shall develop guidelines and procedures for the management of the current records of both FFA Headquarters and the area offices. They shall determine retention and disposal schedules for all types of records, and see to it that such schedules are observed by all divisions, department, and campaign areas.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. II, § 4.

§ 2007. Access to Records.

- (a) The FFA Archives conforms to the "Standards for Access to Research Materials in Archival and Manuscript Repositories," as approved by the Council on the Society of American Archivists in December 1973.
- (b) It is the policy of the FFA that all record series contained in its Archives be opened to qualified researches ten years after the creation of the record except for certain record series which are closed for either shorter or longer periods of time. A complete list of open and closed record series may be obtained from the FFA Archivist.

Historical and Statutory Notes

Source:

Band Statute 1072-MLC-23, T. II, § 5.

CHAPTER 4

CEMETERIES

Section

- 3001. Establishment of the Mille Lacs Band Cemetery Association.**
- 3002. Purposes.**
- 3003. Powers and Responsibilities.**
- 3004. Membership.**
- 3005. Duration.**
- 3006. Authorized Activities.**
- 3007. Board of Trustees.**
- 3008. Officers.**
- 3009. Employees.**
- 3010. Operations.**
- 3011. By-Laws.**

3012. Regulation of the Cemetery.

§ 3001. Establishment of the Mille Lacs Band Cemetery Association.

The Mille Lacs Band of Ojibwe Indians (“Band”) hereby establishes the Mille Lacs Band Cemetery Association (“Association”). The Association shall be a distinct, non-profit legal entity that is separate and apart from the Band.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3002. Purposes.

The purposes of the Association are:

- (a) to acquire the existing Lake View Cemetery (“Cemetery”), including all real and personal property appurtenant thereto, from Kathio Township;
- (b) to hold and manage the Cemetery and all such property appurtenant thereto, unless such property is not needed for cemetery purposes; and
- (c) to protect, preserve, and improve the burying grounds within the Cemetery.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3003. Powers and Responsibilities.

Except as otherwise provided in this chapter, the Association shall have all of the powers and responsibilities of a cemetery association under Band law , provided that the Association shall not dispose of any real property it acquires without the prior written approval of the Chief Executive and Band Assembly, and provided further that the Association shall not dispose of any real property needed or being used for cemetery purposes except to another lawful cemetery association possessing all of the powers and responsibilities of a cemetery association under law. Upon its acquisition of the Cemetery and all property appurtenant thereto, the powers and responsibilities of the Association shall include, but not be limited to, the following:

- (a) to set walkways and, if necessary, relocate gravestones on or near graves so as to preserve the alignment of walkways, provided that any unmarked graves shall be preserved as completely as possible, without removing the bodies interred therein;

- (b) to make regulations governing the location of future graves and the opening of graves;
- (c) to set and charge a uniform fee for the privilege of burial in the cemetery, which may be adjusted from time to time;
- (d) to provide for the upkeep and maintenance of the Cemetery;
- (e) to assist in locating gravesites, with the understanding that records of burials in the Cemetery are not always accurate or available; and
- (f) to remove shrubs or trees that have overgrown a gravesite or that have otherwise become unsightly or a nuisance, provided that the Association will make reasonable efforts to inform known living descendants of an individual buried in an affected gravesite before removing such shrubs or trees.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3004. Membership.

The membership of the Association shall consist of:

- (a) all enrolled members of the Band;
- (b) all other persons who have an ancestor or relative buried in the Cemetery and who choose to become members of the Association; and
- (c) any other person who chooses to become a member of the Association, upon approval of the Association's Board of Trustees. The Association will charge a one-time membership fee to all Association members except enrolled members of the Mille Lacs Band. The Association will not collect dues from its members, but may request voluntary contributions from them.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3005. Duration.

The duration of the Association shall be perpetual unless the Association, with the approval of the Chief Executive and Band Assembly, transfers the Cemetery and all property appurtenant

thereto to another lawful cemetery association possessing all of the powers and responsibilities of a cemetery association under Band law.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3006. Authorized Activities.

The Association is authorized to engage in any lawful activity that is reasonable and necessary to achieve its purposes or to exercise its powers and fulfill its responsibilities, including but not limited to:

- (a) entering into and performing contracts;
- (b) employing personnel and retaining independent contractors, including accountants and attorneys;
- (c) establishing, maintaining, and carrying out employee benefit plans, either on its own or through the Band;
- (d) compromising or otherwise settling disputes; and
- (e) suing or being sued, but only in the Mille Lacs Band Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3007. Board of Trustees.

The activities of the Association shall be managed by a Board of Trustees ("Board") in accordance with the following provisions:

- (a) **Composition, Appointment and Election.** There shall be five positions on the Board. Two of the positions on the Board will be filled by the Band's Commissioner of Natural Resources and its Historic Preservation Officer, each of whom shall serve on the Board during their terms in office. Such service shall be a part of their respective job responsibilities, and shall not entitle them to additional compensation or remuneration. The other three positions on the Board shall be appointed in the following manner:

- (1) One (1) position shall be filled by appointment of the Chief Executive subject to ratification by the Band Assembly. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of a term, shall be two (2) years.
- (2) One (1) position shall be filled by appointment of the Secretary- Treasurer subject to ratification by the Chief Executive. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of the term, shall be two (2) years.
- (3) One (1) position shall be filled by the District I Representative subject to ratification by the Chief Executive. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of the term, shall be two (2) years.

(b) **Vacancies.**

- (1) A Board seat shall be considered vacant under the following circumstances:
 - (i) if there is a vacancy in the position of Band Commissioner of Natural Resources or Band Historic Preservation Officer, in which case the corresponding Board seat shall be considered vacant;
 - (ii) in the event of the death or resignation of a Trustee; or
 - (iii) if the Board finds that a Trustee is unable or unwilling to serve.
- (2) If a Board seat is considered vacant, the vacancy shall be filled as follows:
 - (i) by appointment of the Chief Executive and ratified by the Band Assembly, in the case of a vacancy in the position held by the Band's Commissioner of Natural Resources or its Historic Preservation Officer, until such time as a new Commissioner of Natural Resources or Historic Preservation Officer takes office;
 - (ii) by appointment of the Chief Executive, Secretary- Treasurer, and District I Representative subject to ratification as provided in § 3007(a), in the case of a vacancy in the position held by one of the other three initial appointees, until the end of such appointee's term; and
 - (iii) by appointment of the Chief Executive, Secretary-Treasurer, and District I Representative subject to ratification as provided in § 3007(a), in the case of a vacancy held by one of the other three positions of the Board subsequently appointed, until the end of such member's term.

(c) **Meetings.**

- (1) **Association's Annual Membership Meeting.** The Association will hold an annual membership meeting, in which officers of the Association shall make a full report of the activities of the Association, including a financial report. The date and time of the meeting will be set by the Board.
 - (2) **Board Meetings.** The Board shall hold an annual Board meeting following the Association's annual membership meeting for the appointment of officers of the Association. The Board may establish a schedule for regular Board meetings by resolution setting the date and time for such meetings. Special meetings of the Board may be called by the Board's Chairperson on his or her own initiative or at the request of any two Trustees, to be held at a convenient date and time determined by the person or persons calling the meeting.
 - (3) **Meeting Locations.** All meetings of the Association and the Board shall be held in the Band's Government Center or in another Band facility made available to the Association and the Board at no charge.
 - (4) **Notice of Meetings.** Notice of the Association's annual membership meeting shall be published at least seven calendar days before the meeting in the Mille Lacs Band newspaper, Government Center and District Community Centers bulletin boards, and upon the Band website. No notice is required for annual or regular Board meetings. Notice of special Board meetings shall be given at least three business days in advance of the meeting by written notice delivered personally or by mail, telefax, electronic mail, or other similar means to each Trustee at his or her business or home address or to an electronic mail address designated by such Trustee in writing. If mailed, the notice shall be deemed to be given three calendar days after being deposited in the United States mail properly addressed with postage prepaid. Notice need not be given to a Trustee who waives notice either before or after the meeting or who participates in the meeting without timely objection as to notice. Notice also need not be given to a meeting resumed after adjournment. Neither the business to be transacted at nor the purpose of any special Board meeting need be specified in the notice or waiver of notice.
- (d) **Quorum.** Except as otherwise provided in this Ordinance, three Trustees shall constitute a quorum for the transaction of business at any meeting of the Board, but if less than a quorum is present, a majority of the Trustees present may adjourn the meeting from time to time without further notice.
- (e) **Manner of Acting.** Except as otherwise provided in this Ordinance, the act of a majority of the Trustees present at a Board meeting at which a quorum is present shall be the act of the Board.

- (f) **Presumption of Assent.** A Trustee present at a Board meeting, who neither casts a vote nor expressly abstains from voting on a Board action taken at the meeting, shall be presumed to have assented to the action unless his or her dissent is entered in the minutes of the meeting or he or she files a written dissent to the action with the person acting as the Secretary of the meeting before the adjournment thereof or forwards such dissent by certified or registered mail to the Secretary of the Association immediately after the adjournment of the meeting.
- (g) **Committees.** The Board, by affirmative vote of three Trustees, may delegate specific authority possessed by the Board to a committee of at least two Trustees ("Committee"), provided such delegation shall not operate to relieve the Board or any Trustee of any responsibility imposed by this Ordinance or other applicable law.
- (h) **Telephone Meetings.** The Trustees may participate in any meeting of the Board or a Committee by means of a telephone conference call or similar communications system by which all persons participating in the meeting can hear each other, and such participation shall constitute presence at the meeting.
- (i) **Action without a Meeting.** Any Board or Committee action may be taken without a meeting if consent is expressed in writing, setting forth the action taken, and signed by all Trustees or Committee members, as the case may be. Such written consent shall have the effect of a unanimous vote at a meeting.
- (j) **Compensation.** There shall be compensation for service as a member of the Board of Trustees as provided by the Association's By-laws.
- (k) **Limited liability and indemnification.** The Association shall indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding either civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, agent or employee acting on behalf of the Association, or is or was serving at the request of the Association as a director or officer of another enterprise or corporation, against expenses, including attorneys' fees and costs, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, to the extent that such person is not otherwise indemnified. The Association shall not be required to indemnify such director, officer, agent or employee if independent counsel shall determine pursuant to a judicial decision in any such action, suit or proceeding or independently, in case of settlement, that the director, officer, agent or employee has failed to act in good faith and with that degree of diligence, care and skill which ordinary prudent people would exercise under similar circumstances in like positions.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3008. Officers.

The officers of the Association shall consist of a Chairman of the Board, a Vice Chairman of the Board, a Secretary, a Treasurer, and such other officers as the Board may deem necessary or appropriate, all of whom shall be appointed and hold office as follows:

- (a) **Appointment and Term.** Officers shall be appointed by the Board at the annual Board meeting. Unless the Board specifies a shorter term, each Officer shall hold office until the next annual Board meeting and until his or her successor is appointed and assumes office. Any two or more Offices may be held by the same person except Chairman and Vice Chairman or Chairman and Secretary.
- (b) **Resignation, Removal and Vacancies.**
 - (1) Any Officer may resign by giving written notice to the Association. The resignation shall be effective when given, unless a later effective date is specified in the notice.
 - (2) The Board may remove any officer with or without cause.
 - (3) The resignation or removal of an Officer who also serves as a Trustee shall not also terminate that person's status as a Trustee, unless the resignation so states or that person's position on the Board is considered vacant under § 3007(b) above.
 - (4) As provided below, the Chairman and Vice Chairman of the Board must also be Trustees. Accordingly, upon termination of either Officer's status as a Trustee, his or her status as Officer shall also terminate.
 - (5) If a vacancy occurs in any Office of the Association for any reason, the Board shall appoint a successor to fill the vacancy for the remainder of the unexpired term.
- (c) **Chairman of the Board.** The Chairman of the Board ("Chairman") shall be appointed from among the Trustees and shall preside at all Board meetings and have such other powers and duties as the Board may prescribe.
- (d) **Vice Chairman of the Board.** The Vice Chairman of the Board ("Vice Chairman") shall be appointed from among the Trustees. In case of the absence, disability or death of the Chairman, the Vice Chairman shall exercise and perform all powers and duties of the Chairman. The Vice Chairman shall have such other powers and duties as the Board may prescribe.
- (e) **Secretary.** The Secretary shall:

- (1) take minutes of all Board and Committee meetings, and maintain a book thereof at the Band Government Center, reporting the time and place of the meeting, how it was authorized, the notice given, the names of those present at the meeting, and the actions taken;
 - (2) keep at the Band Government Center a book containing a copy of this Ordinance and all subsequent actions of the Chief Executive and Band Assembly with respect to the Association and Cemetery;
 - (3) keep at the Band Government Center copies of any By-Laws adopted by the Board in accordance with this Ordinance;
 - (4) keep at the Band Government Center annual and quarterly financial statements showing in reasonable detail the Association's assets and liabilities and the results of its operations; and
 - (5) make the foregoing books and records available at all reasonable times for review and inspection by the Trustees, Chief Executive, Commissioner of Finance, Band Assembly, and their designees.
- (f) **Treasurer.** The Treasurer shall:
- (1) supervise and control the maintenance of fiscally responsible accounts for the Association's assets, liabilities, receipts, disbursements, and other financial affairs;
 - (2) cause the books of these accounts to be open at all reasonable times for review and inspection by the Trustees, Chief Executive, Commissioner of Finance, Band Assembly, and their designees;
 - (3) prepare or oversee the preparation of annual and quarterly financial statements showing in reasonable detail the Association's assets and liabilities and the results of its operations, and cooperate with the Secretary of the Association in making such statements available in accordance with paragraph 8(3)(iv) above;
 - (4) deposit all funds and other financial assets of the Association with the Band's Office of Management and Budget;
 - (5) receive or cause to be received, and give or cause to be given, receipts for moneys paid to or on behalf of the account of the Association;
 - (6) request the Commissioner of Finance to disburse, or cause to be disbursed, all funds of the Association as may be directed by the Board, taking proper vouchers for such disbursements;

- (7) render to the Trustees, whenever they may require, accounts of all transactions engaged in as Treasurer and accounts showing the financial condition of the Association; and
- (8) have such other powers and duties as the Board may prescribe.
- (g) **Other Officers; Delegation.** The Board may appoint other Officers as it considers necessary or appropriate. These Officers shall have powers and duties as the Board may prescribe. In case of the unavailability or disability of any Officer, the Board may from time to time temporarily delegate his or her powers or duties to another Officer or Trustee.
- (h) **Compensation.** The Officers shall serve with compensation as provided by the Association's By-laws.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3009. Employees.

- (a) **Management of Cemetery.** Employees of the Band's Community Development Public Works Department ("Public Works") shall oversee the operation of the Cemetery, however, the Board may hire a Cemetery Manager to oversee the operation of the Cemetery in accordance with this Ordinance. The Cemetery Manager may be hired for such term, and on particular terms and conditions, as the Board considers necessary or appropriate to serve the best interests of the Association. Public Works or the Cemetery Manager shall not be a member of the Board. Public Works or the Cemetery Manager shall report to the members of the Association at the Association's annual membership meeting, and shall report to the Board at each regular and special meeting of the Board.
- (b) **Other Employees.** The Board may hire other employees as it considers necessary or appropriate to serve the best interests of the Association, on terms and conditions it considers appropriate.
- (c) **Right to Terminate.** The Board may terminate an employee who is not an employee of Public Works, with or without cause, but the termination shall be without prejudice to the contract rights, if any, of the person so terminated.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3010. Operations.

- (a) **Source of Funds.** The Association shall have three sources of funds:
 - (1) burial fees collected under §3003(c) above;
 - (2) gifts and donations, which shall be tax deductible to the maximum extent permitted by law; and
 - (3) membership fees collected from non-Band Member Association members under paragraph 4 above.
- (b) **Deposit and Expenditure of Funds.** All funds of the Association shall be deposited with the Office of Management and Budget and maintained in a separate, earmarked account for the Association. The Association, in consultation with the Commissioner of Finance, shall use a portion of its funds to establish a permanent trust fund for the benefit of the Association, which shall also be managed by the Office of Management and Budget and held in a separate, earmarked account for the Association. The Commissioner of Finance will disburse the Association's funds on behalf of the Association when requested to do so in accordance with § 3008(e)(6) above, provided that no funds will be disbursed for any purpose other than the authorized purposes of the Association under this Ordinance. The Association's funds shall not be used or obligated by the Band or any other person or entity for any other purpose.
- (c) **Authority to Sign or Endorse Written Instruments.** All checks, drafts, other orders for the payment of money, notes or other evidence of indebtedness, and securities or other valuable instruments, issued in the name of or payable to the Association, and all written contracts of the Association, shall be signed or endorsed on behalf of the Association by the Officer(s) and employee(s) the Board may designate by written resolution. No Officer or employee of the Association shall have power to bind the Association by contract or otherwise unless authorized to do so by this Ordinance or by the Board.
- (d) **Fiscal Year.** The Board shall determine the fiscal year of the Association.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3011. By-Laws.

The Board may adopt, amend, or repeal by-laws of the Association, provided that the bylaws may not contain provisions inconsistent with the provisions of this Ordinance or applicable law.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

§ 3012. Regulation of the Cemetery.

- (a) Upon its acquisition by the Association, the use of the Cemetery shall be subject to the regulations in this section.
- (b) The Cemetery shall be open to the public from two hours before sunrise until two hours after sunset, provided that these hours may be modified by the Association. With the exception of officers or employees of the Association, who the Association has authorized to be on the premises during closed hours, it shall be unlawful to be on the premises of the Cemetery except when it is open to the public. It shall also be unlawful to engage in any activities on the premises of the Association other than those normally associated with burials, visitation of grave sites, memorial services, or upkeep and maintenance of the Cemetery. The Association shall post notice of these provisions in a conspicuous place at or near the entrance to the Cemetery. A person who violates a provision of this paragraph shall be guilty of a civil and criminal trespass under Band law.
- (c) No person shall open a grave without first obtaining permission from the Association. A person applying for permission to open a grave shall submit an application to the Association at least twenty-four hours before the opening. A person in charge of opening a grave shall be responsible for closing the grave and leaving the gravesite in good condition.
- (d) Headstones and other markers must be placed inside gravesites and in accordance with any directives of the Association regarding such placement.
- (e) Flowers placed in the Cemetery must be placed in non-breakable containers within a gravesite.
- (f) No hedges, fences, walls, curbing, railings, or other similar structures may be placed around a gravesite or elsewhere within the Cemetery without approval in writing from the Association.
- (g) Any person who violates any provision in paragraphs c, d, e, or f above shall be guilty of a civil offense, punishable by a civil penalty of not less than \$100 and not more than \$500, and shall be liable to the Association for the costs of removing or relocating any offending item and any damages caused by such item, together with the Association's reasonable attorneys' fees, all as determined by the Mille Lacs Band Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 41-16.

TITLE 11 - ENVIRONMENT, NATURAL RESOURCES, ANIMALS AND PLANTS

<u>Chapter</u>	<u>Section</u>
1. Environmental Protection	1
2. Solid Waste Disposal Recycling	1001
3. Natural Resource Protection Code	2001
4. Domestic Animals	3001
5. 1837 Treaty Conservation Code for the Minnesota Ceded Territory	4001

Historical and Statutory Notes

Band Statute 1163-MLC-21, T.I, § 18.01 provides: "If any provisions of the Band Statute, or the application thereof, to any person, business, corporation or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid provisions or application and to this end, the provisions of this Band Statute are declared severable."

CHAPTER 1

ENVIRONMENTAL PROTECTION

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	1
2. Environmental Protection Ordinance	101
3. Litter	201

Historical and Statutory Notes

The Preamble of Band Statute 1163-MLC-21 provides: "It is enacted by the Band Assembly of the Non-Removable Mille Lacs Bands of Chippewa Indians for the purpose of amending the environmental laws to establish minimum requirements for air, water, land and natural resource pollution control within the territorial jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians."

SUBCHAPTER 1

GENERAL PROVISIONS

Section

1. Purpose.
2. Creation of Environmental Protection Commission.
3. Selection and Terms of Office of Environmental Protection Commission.
4. Environmental Protection Directives.
5. Powers and Duties of Environmental Protection Commission.
6. Entry Upon Property.
7. Reports to Band Assembly.
8. Emergency Powers.
9. Jurisdictional Authority.
10. Judicial Authority.
11. Duty to Notify and Avoid Pollution.
12. Enforcement.
13. Law Enforcement and Natural Resources Officers; Powers.
14. Criminal Penalties.
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16. Defenses.
17. Actions to Recover Penalties or Damages.
18. Actions for Declaratory or Equitable Relief.
19. Exempt Acts.
20. Jurisdiction and Service of Process.
21. Notice to Band of Summons and Complaint.
22. Intervention.
23. Burden of Proof.
24. Collateral Estoppel.
25. Res Judicata.
26. Relief.
27. Rights and Remedies Non-Exclusive.
28. Statute of Limitations.
29. Recovery of Litigation Costs and Expenses.
30. Sovereign Immunity.
31. Construction.

§ 1. Purpose.

- (a) The purpose of Subchapters 1 and 2 of this chapter is to achieve a reasonable degree of purity of air, water, land, and natural resources of the Band consistent with the maximum enjoyment and use thereof in furtherance of the welfare of all persons within the jurisdiction of the Band. Subchapters 1 and 2 of this chapter are enacted by the inherent aboriginal and sovereign rights of the members of the Non-Removable Mille Lacs Bands of Chippewa Indians, the Treaties of 1837 and 1855, and by the

authority vested in the Non-Removable Mille Lacs Bands of Chippewa Indians under Article I, Section 3; Article VI, Sections 1 and 2; and Article XIII of the Constitution of the Minnesota Chippewa Tribe.

- (b) It is the purpose of Subchapters I and II of this chapter to establish and further the environmental policies of the Bands to provide for the prevention, control and abatement of the pollution of the air, water, and land, so far as feasible and practical, in furtherance of conservation of the natural resources and public health and safety of all territories subject to the jurisdiction of the Band. It is hereby declared that such efforts are necessary for the protection of present and future vital security interests of the Band and its members.
- (c) It is the purpose of Subchapters 1 and 2 of this chapter, to safeguard the air, waters and lands of the Band from pollution by preventing any new pollution and abating pollution existing upon enactment of this Band Statute, under a program consistent with the declaration of policy hereinafter stated and the minimum environmental standards established by the laws and regulations promulgated by the United States of America, unless supplemented by more restricted standards of Band law.
- (d) It is the purpose of Subchapters 1 and 2 of this chapter, to perpetuate commonly held traditional beliefs, amongst American Indian people that human beings have a duty to peacefully co-exist within the natural environment. Human beings further have a natural duty to protect the environment which provides humans with life-sustaining natural resources.
- (e) It shall be the public policy of the Non-Removable Mille Lacs Bands of Chippewa Indians that each person has an inalienable right to the protection, preservation, and enhancement of air, water, land and other natural resources located within the jurisdiction of the Band and that each person has a legal duty to aid in the protection, preservation and enhancement of air, water, land and other natural resources located within the jurisdiction of the Band, so that all human beings may live in harmony with nature.
- (f) It shall be the public policy of the Non-Removable Mille Lacs Bands of Chippewa Indians to enact and enforce a series of environmental protection measures which shall, at a minimum equal the environmental protection laws of the United States of America and, if necessary and prudent exceed the minimum standards established by federal law.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 1.

Cross References

Band governmental power and sovereignty, see 2 MLBS § 1.

§ 2. Creation of Environmental Protection Commission.

There is hereby created within the Natural Resources Administration, a separate administration to be known as the Environmental Protection Commission of the Non-Removable Mille Lacs Bands of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 2.

§ 3. Selection and Terms of Office of Environmental Protection Commission.

- (a) The Environmental Protection Commission shall be comprised of a five-member commission chaired by the Commissioner of Natural Resources. The remaining members of the Commission shall be nominated by the Chief Executive and confirmed by the Band Assembly to a four-year term of office to expire on June 30, 1992, and every four years henceforth from this date.
- (b) The members of the Commission shall be nominated as a consequence of their individual education, abilities, knowledge of nature, concern and commitment demonstrated for the environmental resources of the Band. The composition of the Commission shall not be restricted to members of the Band and at least one seat shall be filled by a person from the community surrounding the lands subject to the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 3.

§ 4. Environmental Protection Directives.

The public acts and deeds of the Agency shall be published in the form of Environmental Protection Directives. Such written Directives shall be in uniform format, numbered consecutively and have expiration dates. The Commissioner of Natural Resources is authorized to execute such Directives in the name of the Commission, and to act in the name of the Commission when public necessity so dictates a documented need to do so, or as set forth in 11 MLBS § 8.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 3.02.

§ 5. Powers and Duties of Environmental Protection Commission.

The Environmental Protection Commission shall have the following powers and responsibilities:

- (a) To administer and enforce all environmental protection regulations, herein enacted, of the United States of America and the Non-Removable Mille Lacs Bands of Chippewa Indians;
- (b) To investigate the extent, character and effect of pollution of the air, water, land or natural resources of the Band and to gather data and information necessary or desirable in the administration or enforcement of pollution laws, and to make such classification of the air, water, land or natural resources of the Band as it may deem advisable; and, to take such measures as necessary to abate pollution;
- (c) To establish and alter such reasonable standards and regulations for quality air, water, lands and other natural resources of the Band in relation to the public use and enjoyment of the members as necessary to implement the purposes of Subchapters 1 and 2 of this chapter;
- (d) To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, regulations, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate pollution of the air, waters, lands, or natural resources subject to the jurisdiction of the Band;
- (e) To exercise all powers, duties and responsibilities, which are reasonably necessary for the protection of the air, water, lands, and natural resources of the Band. All such authority so exercised pursuant to this subsection shall be consistent in scope and nature with authority delegated to the United States Environmental Protection Agency by act of Congress or federal judicial interpretation of such act.
- (f) To enter into cooperative agreements with any environmental protection agency of the United States, the State of Minnesota or any other federally recognized Indian tribe relating to the purposes of Subchapters 1 and 2 of this chapter.
- (g) To receive and accept money, property or services from any person or from any agency described in subsection (f) or from any other source for any purpose within the scope of its functions, in the name of the Non-Removable Mille Lacs Bands of Chippewa Indians. All monies so received are hereby appropriated for such purposes in like manner and subject to like provisions of law as the corresponding appropriations of all Band revenue. The Commission shall have no authority to waive the sovereign immunity of the Non-Removable Mille Lacs Bands of Chippewa Indians as a requisite to receipt of any domestic assistance or private funding.
- (h) To issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the

installation or operation of any emission facility, air contaminant treatment facility, air contaminant treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emission of either air or noise pollution on lands subject to the jurisdiction of the Band.

- (i) To issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the storage, collection, transportation, processing, or disposal of waste, or for the installation or operation of any system or facility, or any part thereof related to the storage, collection, transportation, processing, or disposal of waste.
- (j) To prohibit the introduction, storage, collection, processing, disposal, or transportation of hazardous waste on lands subject to the jurisdiction of the Band.
- (k) To hold public hearings as it may deem necessary or advisable for the discharge of its duties under this act. All hearings conducted by the Environmental Protection Commission shall be recorded and transcribed. All final records, studies, reports and other documents prepared in final form by order of, or for consideration of, the Commission, are confidential records of the Non-Removable Mille Lacs Bands of Chippewa Indians. Notwithstanding the foregoing, the Commission may disclose any such information in order to comply with federal law and regulation, to the extent and for the purposes of such federally required disclosure.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, § 4.

§ 6. Entry Upon Property.

Whenever the Commission deems it necessary for the purposes of Subchapters I and II of this chapter, the Commission or any member, employee, or agent thereof, when authorized by it, may enter upon any property subject to the jurisdiction of the Band or public lands not subject to the jurisdiction of the Band, for the purpose of obtaining information or conducting surveys or investigations.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 4.12.

§ 7. Reports to Band Assembly.

The Environmental Protection Commission shall, before December 1 of each year, prepare a report of progress on abatement and control of air, water, land or natural resource pollution with recommendations for legislation in furtherance of the Band's environmental policies.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-2 1, T.I, § 20.

§ 8. Emergency Powers.

In the event that there is imminent and substantial danger to health and welfare of the members of the Band as a result of the pollution of air, water, land or natural resources; upon such finding, the Environmental Protection Commission may by emergency directive order the immediate discontinuance of abatement of such pollution without notice and without a hearing, or at the request of the Commission, the Solicitor General of the Band may bring an action in the name of the Band in any court of competent jurisdiction for a temporary restraining order to immediately abate or prevent such pollution. Such Commission directive or temporary restraining order shall remain effective until notice, hearing and determination are affected pursuant to other provisions of law, or, in the interim, as otherwise ordered. Such Commission directive shall be appealable to the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 21.

§ 9. Jurisdictional Authority.

The Environmental Protection Commission shall exercise all the environmental jurisdiction possessed by the Non-Removable Mille Lacs Bands of Chippewa Indians as stated herein:

- (a) The Non-Removable Mille Lacs Bands of Chippewa Indians shall exercise concurrent environmental jurisdiction with the United States of America over the air space encompassing all lands and waters subject to the jurisdiction of the Band.
- (b) The Non-Removable Mille Lacs Bands of Chippewa Indians shall exercise concurrent environmental jurisdiction with the United States of America over all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation system, drainage systems and all other accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon lands of the Mille Lacs Bands of Chippewa Indians.

- (c) The Non-Removable Mille Lacs Bands of Chippewa Indians shall exercise concurrent environmental jurisdiction with the United States of America over:
- (1) all lands within the exterior boundaries of the Mille Lacs Reservation and Sandy Lake Reservation as established by the Treaty of 1855;
 - (2) all lands held in trust by the United States of America for the benefit of the Minnesota Chippewa Tribe, which are lawfully delegated to the jurisdiction of the Mille Lacs Bands; and, all lands held in trust by the United States of America for the benefit of the Non-Removable Mille Lacs Bands of Chippewa Indians;
 - (3) all lands subject to the jurisdiction of the Band pursuant to federal law, notwithstanding the issuance of any patent, and including rights-of-way running through said lands;
 - (4) all individual allotments for the benefit of any member of the Non-Removable Mille Lacs Bands of Chippewa Indians which are located within the exterior boundaries of the Mille Lacs and Sandy Lake Reservations as established by the Treaty of 1855;
 - (5) all lands held in fee status in the name of the Non-Removable Mille Lacs Bands of Chippewa Indians which are located within the exterior boundaries of the Mille Lacs and Sandy Lake Reservations as established by the Treaty of 1855.
- (d) The criminal and civil jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians shall extend to all enrolled members of the Mille Lacs Bands of Chippewa Indians, enrolled members of the Minnesota Chippewa Tribe who reside within the territorial jurisdiction of the Mille Lacs Bands of Chippewa Indians, Indians from other tribes who enter the territorial jurisdiction, including Indian Country, of the Mille Lacs Bands of Chippewa Indians, Indians from other tribes who enter the territorial jurisdiction of the Mille Lacs Bands of Chippewa Indians by virtue of residency, employment or violation of Mille Lacs Band Statute(s) within the territorial jurisdiction of the Mille Lacs Bands of Chippewa Indians.
- (e) The exercise of civil jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians over non-Indians, in environmental protection causes of action shall exist to the extent authorized by the laws of the United States of America. The criminal jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians shall not extend to non-Indians.
- (f) The jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians shall extend to all persons, political sub-divisions and their officers and agents, public or private corporations, associations, partnerships and any other individuals or entities who shall violate the environmental protection laws of the Band within the exterior

boundaries of the Mille Lacs and Sandy Lake Reservations or on lands held in trust or fee status in the name of the Band, as authorized pursuant to the laws of the United States of America.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 5.

Cross References

Jurisdiction of Court of Central Jurisdiction, *see* 5 MLBS §§ 111-113.

§ 10. Judicial Authority.

- (a) The Court of Central Jurisdiction shall have original jurisdiction over any civil or criminal violation of the environmental protection laws of the Non-Removable Mille Lacs Bands of Chippewa Indians, subject to the provisions of 11 MLBS § 9.
- (b) The Court of Central Jurisdiction is hereby authorized to dismiss and transfer any cause of action where jurisdiction cannot be lawfully exercised, to any court of competent jurisdiction entitled to adjudicate said cause of action.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 6.

Cross References

Jurisdiction of Court of Central Jurisdiction, *see* 5 MLBS §§ 111-113.

§ 11. Duty to Notify and Avoid Pollution.

It is the duty of every person subject to the jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians to notify the Environmental Protection Commission immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of the air, waters, lands or natural resources of the Band, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or materials, and take immediately, such other action as may be reasonably possible to minimize or abate pollution of the air, waters or lands of the Band.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 8.

§ 12. Enforcement.

The provisions of Subchapters 1 and 2 of this chapter and all regulations, standards, orders, stipulation agreements, schedules of compliance and permits adopted or issued by the Environmental Protection Commission for the prevention, control, or abatement of pollution of the air, water, lands or natural resources subject to the jurisdiction of the Mille Lacs Bands of Chippewa Indians may be enforced by any one or any combination of the following:

- (a) Criminal prosecution;
- (b) Action to recover civil penalties;
- (c) Injunctions;
- (d) Action to compel performance; or
- (e) Other appropriate action in accordance with other provisions of Subchapters 1 and 2 of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 7.

§ 13. Law Enforcement and Natural Resources Officers; Powers.

Any duly authorized law enforcement officer or natural resources officer of the Non-Removable Mille Lacs Bands of Chippewa Indians is hereby authorized to take all action to the extent of their authority that may be necessary or proper for the enforcement of Subchapters I and II of this chapter, regulations, standards, directives, stipulation agreements, variances; schedule of compliance or permits.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 7.01.

Cross References

Enforcement, Environmental Protection Ordinance, *see* 11 MLBS § 105.

§ 14. Criminal Penalties.

- (a) Any Indian who willfully or negligently violates any provision of Subchapters 1 and 2 of this chapter, or any standard, regulation, variance, directive, stipulation agreement, schedule of compliance or permit issued or adopted by any environmental

protection agency or government which violation is not included in subsection (b), shall upon conviction be guilty of an environmental offense and may be sentenced to imprisonment for no longer than one hundred and eighty days and/or a fine not to exceed five thousand dollars.

- (b) Any Indian who willfully or negligently violates any provision of Subchapter 1 or 2 of this chapter or the provision of any federal law enacted for the protection of the environment which is incorporated by reference into the laws of the Mille Lacs Bands of Chippewa Indians, shall upon conviction, be guilty of an environmental offense and may be punished by a fine schedule as promulgated by the Commissioner of Natural Resources.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 9.

Cross References

Violations and penalties, Environmental Protection Ordinance, *see* 11 MLBS § 106.

§ 15. Civil Penalties.

- (a) Any person subject to the jurisdiction of the Band who violates any provision of Subchapter 1 or 2 of this chapter or any provision of any federal law enacted for the protection of the environment which is incorporated by reference into this chapter, or any standard regulation, variance, directive, stipulation agreement, schedule of compliance or permit issued or adopted by any environmental protection agency of government shall forfeit and pay to the Band a penalty, in an amount to be determined by the court, of not more than five thousand dollars per day of violation.
- (b) In addition, in the discretion of the court, the defendant may be required to:
 - (1) Forfeit and pay to the Band a sum which will adequately reimburse any vendor for the reasonable value of cleanup and other expenses directly resulting from unauthorized discharge of pollutants, whether or not accident; and
 - (2) Forfeit and pay to the Band an additional sum to constitute just compensation for any loss or destruction of wildlife, fish or other aquatic life, and birds and for other proven actual damages to the Band caused by an unauthorized discharge of pollutants.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 10.

Cross References

Violations and penalties, Environmental Protection Ordinance, *see* 11 MLBS § 106.

§ 16. Defenses.

As a defense to any said damages, the defendant may prove that the violation was caused solely by:

- (a) natural causes;
- (b) negligence on the part of the Mille Lacs Bands of Chippewa Indians of some other unit of government; or
- (c) an act or failure to act which constitutes sabotage or vandalism, or
- (d) any combination of the foregoing subsections.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 10.03.

§ 17. Actions to Recover Penalties or Damages.

The civil penalties and damages provided for in 11 MLBS § 16 may be recovered by a civil action brought by the Solicitor General in the name of the Non-Removable Mille Lacs Bands of Chippewa Indians in the Court of Central Jurisdiction or in any other court of competent jurisdiction of the State of Minnesota or Wisconsin provided that this chapter is utilized to commence and determine the rights and obligations of the parties, pursuant to the provisions of 28 USC 1360(d) or any other applicable federal law.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 10.04.

Cross References

State civil jurisdiction, Environmental Protection Ordinance violations, *see* 11 MLBS § 128.

§ 18. Actions for Declaratory or Equitable Relief.

Any person residing on trust land subject to the jurisdiction of the Band, the Solicitor General, on behalf of the Band or any instrumentality or administration of the Band may maintain a civil

action in the Court of Central Jurisdiction for declaratory or equitable relief in the name of the Non-Removable Mille Lacs Bands of Chippewa Indians against any person, for the protection of the air, water, land or other natural resources located within the jurisdiction of the Band, whether publicly or privately owned, from pollution, impairment or destruction.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 11.

§ 19. Exempt Acts.

No action shall be permitted pursuant to 11 MLBS § 18 for acts taken by a person which do not and cannot reasonably be expected to pollute, impair, or destroy any other air, water, land or natural resources located within the jurisdiction of the Band. Neither shall actions be permitted under 11 MLBS § 18 for conduct taken by a person pursuant to established environmental quality standards of Band law, any regulation, rule, declaration, license, stipulation agreement or permit issued by the Mille Lacs Environmental Protection Commission.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 11.01.

§ 20. Jurisdiction and Service of Process.

As to any cause of action arising under 11 MLBS § 18, the Court of Central Jurisdiction may exercise personal jurisdiction to the extent permissible by the laws of the Mille Lacs Bands and the United States and service of process on any person who is subject to the jurisdiction of the Court of Central Jurisdiction may be made by personally serving the summons upon the defendant who may be outside of the jurisdiction of the Band with the same effect as though the summons had been personally served within the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 14.

Cross References

Personal jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 113.

§ 21. Notice to Band of Summons and Complaint.

Within seven days after commencing such action, the plaintiff shall cause a copy of the summons and complaint to be served upon the Solicitor General and the Commissioner of Natural Resources.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 11.02.

§ 22. Intervention.

In any action maintained under 11 MLBS § 18, the Solicitor General may intervene as a matter of right and may appoint special counsel where as a result of such intervention he may represent conflicting or adverse interests. Other interested parties may be permitted to intervene on such terms as the court may deem just and equitable in order to effectuate the purposes and policies of Subchapters 1 and 2 of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 11.03.

§ 23. Burden of Proof.

- (a) In an action maintained pursuant to 11 MLBS § 18, where the subject of the action is conduct governed by any provision of Subchapter 1 or 2 of this chapter or an action by the Environmental Protection Commission, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant violates or is likely to violate any provisions of this Act or any action by the Environmental Protection Commission, the defendant may rebut the prima facie showing by the submission of evidence to the contrary.
- (b) In any other action maintained pursuant to 11 MLBS § 18, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resource located within the jurisdiction of the Band, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety and welfare in light of the Band's paramount concern for the protection of the overall environment from pollution, impairment or destruction. Economic considerations alone shall not constitute a defense hereunder.

- (c) In an action maintained under 11 MLBS § 18, the plaintiff shall have the burden of proving that the environmental quality standard, limitation, regulation, rule, directive license, stipulation agreement or permit is inadequate to protect the air, water, land or other natural resources located within the jurisdiction of the Band from pollution, impairment or destruction by showing material evidence of such inadequacy.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 12.

§ 24. Collateral Estoppel.

Where any action maintained pursuant to 11 MLBS § 18 results in a judgment in favor of the defendant that no violation of Subchapter 1 or 2 this chapter has occurred by said defendant, the judgment shall not stop the Band from re-litigation of any or all of the same issues with the same or other defendants unless the Band brought the prior action against the same or other defendant.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 11.04.

§ 25. Res Judicata.

Where any action maintained pursuant to 11 MLBS § 18 results in a judgment in favor of the plaintiff, the judgment shall be res judicata between the parties in any action the Band may bring against the same defendant.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 11.05.

§ 26. Relief.

The Court of Central Jurisdiction may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions on the party as are necessary or appropriate to protect the air, water, land or other natural resource located within the jurisdiction of the Band from pollution, impairment or destruction. When the court grants temporary equitable relief, it may require the plaintiff, except where the Band is plaintiff, to post a bond sufficient to indemnify the defendant for damages suffered because of the temporary relief, if permanent relief is not granted.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 13.

Cross References

Injunctions, Environmental Protection Ordinance, *see* 11 MLBS § 107.

§ 27. Rights and Remedies Non-Exclusive.

No existing civil or criminal remedy for any wrongful action shall be excluded or impaired by Subchapter 1 or 2 of this chapter. The rights and remedies herein shall be in addition to any administrative, regulatory, statutory or common law right and remedies now or hereafter available.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 15.

§ 28. Statute of Limitations.

Proceedings in respect of an environmental offense pursuant to any provisions of Subchapter 1 or 2 of this chapter, may be instituted at any time within three years after the time when the subject matter of the proceedings was discovered.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 17.

§ 29. Recovery of Litigation Costs and Expenses.

In any action brought by the Solicitor General, in the name of the Band, pursuant to Subchapter 1 or 2 of this chapter, for civil penalties, injunctive relief, or in an action to compel compliance, if the Band shall finally prevail, and if the proven violation was willful, the Band, in addition to other penalties provided in 11 MLBS § 15, may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the Band. In determining the amount of such litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 16.

§ 30. Sovereign Immunity.

The Non-Removable Mille Lacs Bands of Chippewa Indians shall not be subject to any environmental suit in any court of competent jurisdiction without the expressed enactment of law by the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 19.

§ 31. Construction.

The Solicitor General or exterior legal counsel and the Court of Central Jurisdiction whichever is applicable, shall liberally construe the provisions of Subchapters 1 and 2 of this chapter so as to provide for the full force and effect of the purposes therein stated.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.I, § 18.

SUBCHAPTER 2

ENVIRONMENTAL PROTECTION ORDINANCE

Section

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- 125. **Subsurface Resources.**
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Historical and Statutory Notes

The Preamble of Band Statute 1091-MLC-24 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians in order to exercise a more effective form of tribal government to regulate the natural resources of the Mille Lacs Band of Chippewa Indians."

§ 101. Title of Subchapter.

This subchapter shall be known as the Mille Lacs Band of Chippewa Indians Environmental Protection Ordinance.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.II, § 1.

§ 102. Statement of Purpose.

The Mille Lacs Band of Chippewa Indians Natural Resource Protection Ordinance to protect the natural resources within the jurisdiction of the Mille Lacs Band of Chippewa Indians as defined under the Constitution of the Minnesota Chippewa Tribe pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), amended June 15, 1935 (49 Stat. 3781) and approved by the Secretary of Interior on July 24, 1936. This subchapter is to provide a uniform set of standards which are necessary to supplement the Mille Lacs Reservation's Conservation Code, so that hunting, fishing, trapping, wild rice and all other natural resources of Reservations' and Bands' may be preserved and protected. Where such Band laws and standards do not exist and are not promulgated, these laws and standards will apply. And whereas the Mille Lacs Band of Chippewa Indians finds that water is the primary resource of the natural resources system, the

protection of the quality and quantity of the water resources is the primary objective of these laws and furthermore, the inter-relationships of water and other natural resources is such that the management of soil, timber, air and mineral resources has both direct and indirect effects upon the quality and quantity of the water, fish, wild rice and wildlife resources. These and all other interaction of resources will be considered when planning and management activities are engaged.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 1.01.

Band Statute 1163-MLC-21, T.II, § 1.01.

Cross References

Natural Resources Protection Code, *see* 11 MLBS § 2001.

§ 103. Definitions.

- (a) **"Band"** means the Mille Lacs Band of Chippewa Indians and the constituent Bands of the Non-Removable Mille Lacs Band of Chippewa Indians.
- (b) **"Clearcutting"** means any timber harvested and timber cutting on any and all tracts of land where the standing timber remains after harvesting or cutting is less than 40 trees of 8 inches or greater dbh per acre.
- (c) **"Day"** means a 24-hour period which shall be from 12:00:00 a.m. to 11:59:59 p.m. in the Central Time zone of the United States.
- (d) **"Lake"** means anybody or accumulation of water, whether natural or artificial, the majority of which is open water, which is an area 10 acres or more, and in depth at least 15 feet at some point.
- (e) **"Marsh, Wetland"** means anybody or accumulation of water whether natural or artificial, whether or not seasonal, where a majority area of the surface water contains emergent vegetation.
- (f) **"Non-Point Source"** means man-made or man-induced pollution from any and all sources not included in the point source definition.
- (g) **"Open Water"** means a water surface absent of emergent vegetation.
- (h) **"Person"** means any municipality, governmental sub-division, public or private corporation, individual, partnership, or other entity, including but not limited to association, commission or any interstate body, and includes any officer or governing

or managing body of any municipality, governmental subdivision, or public or private corporation or other entity.

- (i) **"Point Source"** means any discernible, confined, and discrete conveyance, including but not limited to any pipe, stack, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
- (j) **"Pollution, Water Pollution, Air Pollution"** means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of the waters or atmosphere of the Mille Lacs Band of Chippewa Indians.
- (k) **"Pond"** means anybody or accumulation of water, whether natural or artificial, the majority of which is open water, which is an area less than 10 acres, whether or not seasonal.
- (l) **"River, Stream"** means any waterway or watercourse, whether natural or artificial, whether or not seasonal, which follows a flow channel to any lake, pond, marsh, river or to any other accumulation of water.
- (m) **"Road"** means any roadway, whether paved; graveled or otherwise surfaced, which is maintained for public use of four-wheeled vehicles.
- (n) **"Standard"** means water quality and quantity standards, air quality standards and soil protection standards as outlined in this Mille Lacs Band of Chippewa Indians Resource Protection Ordinance.
- (o) **"Waters of the Mille Lacs Band of Chippewa Indians"** means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifer, irrigation system, drainage systems and all other accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon lands of the Mille Lacs Band of Chippewa Indians, and which are contained with, flow through or border upon any other lands where Mille Lacs Band of Chippewa Indians member's rights of hunting, fishing, trapping and gathering rice are reserved.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 2.
Band Statute 1163-MLC-21, T.I, § 2.

§ 104. Jurisdiction.

- (a) The jurisdiction of the Mille Lacs Band of Chippewa Indians under this subchapter shall extend to:

- (1) All lands within the exterior boundaries of the constituent Bands of the Non-Removable Mille Lacs Band of Chippewa Indians as created by treaty, Executive Order, or federal act, notwithstanding the issuance of any patent and including rights-of-way running through said land.
 - (2) All dependent Mille Lacs Band of Chippewa communities within the state of Minnesota.
 - (3) All Mille Lacs Band of Chippewa Indians allotments, whether within or without the boundaries of member Bands, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- (b) Jurisdiction shall extend over all persons or corporations whether Indian or non-Indian.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 3.
Band Statute 1163-MLC-21, § 3.

Cross References

Jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 105. Enforcement.

This Title shall be enforced by Reservation Conservation Officers or any other duly appointed officers of the Mille Lacs Band of Chippewa Indians or its member Bands or any other persons as provided by the Ordinance of the Mille Lacs Band of Chippewa Indians or its member Bands.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 4.
Band Statute 1163-MLC-24, T. II, § 4.

Cross References

Law enforcement and natural resources officers, powers, environmental protection, *see* 11 MLBS § 13.

§ 106. Violations and Penalties.

Any violation of this subchapter shall be considered a civil offense subject to the following penalties:

- (a) Pay the cost of any necessary cleanup, restoration or reclamation caused by the violation, as ordered by the Court of Central Jurisdiction, or by any administrative body with jurisdiction.
- (b) Pay any actual damages for injury to property, life or resources of any person, corporation, or public body or governmental agency.
- (c) Pay as punitive damages a penalty of up to five hundred dollars per day for each day of continuing violation.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 5.
Band Statute 1163-MLC-21, T.II, § 5.

Cross References

Civil penalties, environmental protection, *see* 11 MLBS § 15.
Criminal penalties, environmental protection, *see* 11 MLBS § 14.

§ 107. Injunctions.

All violations of this subchapter may be enjoined by order of any court with jurisdiction to prevent continuing violations. Any violation of said order shall be in addition to said above penalties and subject to punishment for contempt of court. Punishment for said contempt shall be at the discretion of the court, subject only to those limitations prescribed by law.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 5.04.
Band Statute 1163-MLC-21, T. II, § 5.04.

Cross References

Actions for declaratory or equitable relief, environmental protection, *see* 11 MLBS § 18.

§ 108. Notice of Violation.

The Mille Lacs Band of Chippewa Indians or its member Bands through their duly appointed officers shall give a written notice to any violators of this subchapter. Said notice shall be served upon any violator by giving a copy of said notice to the violator if he/she can be located within the jurisdiction of the Mille Lacs Band of Chippewa Indians or its member Bands. Service of said notice may be given to serving a copy to said violator or leaving the notice at the residence or place of business of said violator, with any adult and who resides in the residence or is

employed at the business of the violator. In the event the person or business causing the violation is not within the jurisdiction of the Mille Lacs Band of Chippewa Indians or its member Bands, then a notice may be posted on the land where offense is occurring. It shall be posted in a conspicuous place. A copy shall also be mailed to the last known residence or business address of the violator.

Said notice shall specify the nature of the violation, the location of the violation, and the section of this subchapter being violated. It shall set a date for a hearing before the court or administrative body as established by Band law. Said hearing shall be no sooner than five days after service of said notice. In the event that no actual service can be made on a violator because he cannot be found, does not have a residence or place of business within the jurisdiction of the Mille Lacs Band of Chippewa Indians, then said notice of violation shall be published twice during two consecutive weeks in a newspaper in the county where said violation occurred. An affidavit of said publication shall be filed with the appropriate court or administrative body and shall constitute proof of service of said notice.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 6.
Band Statute 1163-MLC-21, T.II, § 6.

§ 109. Default.

In the event a defendant fails to appear before the court or appropriate administrative body on the date set for a preliminary appearance, the court or administrative body may declare the defendant to be in default and award any appropriate relief to the complainant as provided by this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 6.01.
Band Statute 1163-MLC-21, T.II, § 6.01.

§ 110. Setting Hearing Date.

In the event a defendant does appear on the date set in the notice of violation, the court or administrative body hearing said matter shall set a date as soon as practicable for a full evidentiary hearing on the violation if the defendant denies the violation or responsibility for the violation.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 6.02.
Band Statute 1163-MLC-21, T.II § 6.02.

§ 111. Sewage Disposal System Permits.

- (a) Permits shall be required for all of the following activities and application for said permits shall be on forms supplied by the Mille Lacs Band of Chippewa Indians:
 - (1) Construction of septic systems and drainfields, and any other type of individual or multifamily sewage disposal system, whether the construction is for a new system or for the up-grading of an old system.
 - (2) Municipal, community, and village sewage treatment plant, and any other sewage disposal system.
- (b) Approval for said permits shall be obtained from the Public Works Commissioner on the reservation where said activity will occur.
- (c) Fees for said permits shall be the sum specified by the Band Ordinance and so stated on the appropriate application form.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 7.

Band Statute 1163-MLC-21, T.II, § 7.

§ 112. Permits Generally.

Permits shall be required for all of the following activities and application for said permits shall be on forms supplied by the Mille Lacs Band of Chippewa Indians. Approval for said permits must be obtained from the Department of Natural Resources on the reservation where said activity will occur. Fees for said permits shall be the sum specified by the Ordinance and so stated on the appropriate application form.

- (a) Any and all excavation, mining, road building, draining, dredging, filling, and any other earth removal or disposition projects with the exception of excavation necessary for single family housing units.
- (b) Any and all insecticide, herbicide, fungicide, algacide, and any other pesticide use, no matter the application procedure, with the exception for household use of pesticides for public health measures.
- (c) Any and all industrial and commercial point source discharges into the Mille Lacs Band of Chippewa Indians waters.
- (d) Any and all commercial and private non-point source discharges into the Mille Lacs Band of Chippewa Indians waters.

- (e) Any and all commercial and private air emissions relating to the production of goods, products or materials.
- (f) Any and all forestry clearcutting activities and cutting of timber by any method where the tract to be logged is adjacent to any lake, stream, pond or road.
- (g) Any and all developments and improvements of parks, landings, beaches, harbors and canals and other related facilities, whether public or private.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 8.
Band Statute 1163-MLC-21, T.II, § 8.

Cross References

Herbicides, use on noxious weeds, *see* Nat. Res. Comm. Order 133-90.

§ 113. Environmental Assessments and Impact Statements.

The issuance of any and all permits will be preceded by an Environmental Assessment Worksheet. These assessments shall be completed by the MLBC Research Laboratory, based upon work plans submitted by the permittee and site inspection, laboratory analysis and any other pertinent data. If in the findings of the assessment, an Environmental Impact Statement is proposed, then a public hearing to determine the necessity of the Environmental Impact Statement will be conducted. If an Environmental Impact

Statement is requested by the Mille Lacs Band of Chippewa Indians Environmental Board, the MLBC Research Laboratory will produce and present, within ninety days of the date of request, and at the permittee's expense, an EIS for public hearing before said Mille Lacs Band of Chippewa Indians Environmental Board. The decision of the Mille Lacs Band of Chippewa Indians Environmental Board for issuance or non-issuance of the permit based on the findings of the EIS shall be final.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 9.
Band Statute 1163-MLC-21, T.II, § 9.

§ 114. Format for the Environmental Impact Statement.

The components of all Environmental Impact Statements shall be as follows:

- (a) environmental impacts, both beneficial and degrading;
- (b) social impacts, both beneficial and degrading; and
- (c) economic impacts, both beneficial and degrading.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 10.
Band Statute 1163-MLC-21, T.II, § 10.

§ 115. Variances.

Any and all requests for a variance from the provisions of this subchapter shall be presented before, and subject to the approval of the appropriate Mille Lacs Band Assembly in the manner they shall prescribe. The decision of the Mille Lacs Band Assembly shall be final.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 11.
Band Statute 1163-MLC-21, T.II, § 11.

§ 116. Water-Policy and Goals.

The waters of the Mille Lacs Band of Chippewa Indians will be protected from degradation. The quality of the water will be maintained or improved to guarantee the treaty rights of the members of the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 12.
Band Statute 1163-MLC-21, T.II, § 12.

Cross References

Injection wells, *see* Nat. Res. Comm. Order 107-89.

§ 117. Water-Definitions.

- (a) **"Ambient"** means that concentration which exists without point source pollution as established by MLBC Research Lab.

- (b) **"LC₅₀"** means the concentration of toxicant that is lethal (fatal) to 50 percent (50%) of the sensitive resident species organisms tested under the test conditions in a specific time.
- (c) **"Toxicant, Toxic Substance"** means those pollutants or combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the MLBC, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organism or its offspring.

Historical and Statutory Notes

Source:

Band Statute 1163-MLC-21, T.II, §§ 13.01-13.03.
 Band Statute 1091-MLC-24, §§ 13.01-13.03.

§ 118. Water-Standards.

- (a) All standards will be interpreted to mean a maximum allowable limit unless otherwise stated.

<u>Constituent</u>	<u>Concentration or Limits</u>
Alkalinity	20 mg/l or more as CaCO ₃ for fresh water aquatic life except where natural concentration are less
Ammonia	.02 mg/l as (un-ionized ammonia) for fresh water aquatic life
Arsenic	50 ug/l for domestic water supply
Barium	1 mg/l for domestic water supply
Beryllium	11 ug/l for the protection of aquatic life in soft fresh water 1,100 ug/l for the protection of aquatic life in hard fresh water
Boron	750 ug/l
Cadmium	10 ug/l for domestic water supply.
	<u>Aquatic Life</u> Soft Water: 0.4 ug/l Hard Water: 1.2 ug/l
Chlorine	2.0 ug/l for salmonid fish 10 ug/l for other fresh water fish

Chromium	50 ug/l for domestic water supply 100 ug/l for fresh water aquatic life								
Fecal Coliform Bacteria	200 colonies/100 ml.								
Color	75 color units on platinum-cobalt scale for domestic water supplies								
Copper	1 mg/l for domestic water supply 0.1 X 96 hours LC ₅₀ for fresh water aquatic life								
Cyanide	5.0 ug/l for fresh water aquatic life								
Gases, total dissolved	110% of saturation at existing atmosphere and hydrostatic pressures								
Iron	0.3 mg/l for domestic water supply 1.0 mg/l for fresh water aquatic life								
Lead	50 ug/l for domestic water supply 0.1 X 96 hour LC ₅₀ for fresh water aquatic life								
Manganese	50 ug/l for domestic water supply and fresh water aquatic life								
Mercury	2.0 ug/l for domestic water supply .05 ug/l for fresh Water aquatic life								
Nickel	.01 X 96 hour LC ₅₀ for fresh water aquatic life								
Nitrate, Nitrite	10 mg/l nitrate nitrogen for domestic water supply, not to exceed ambient NO ₂ -NO ₃ for all water systems, as established by MLBC Research Lab								
Oil and Grease	Domestic water supplies virtually free from oil and grease .01 X 96 hour LC ₅₀ for fresh water aquatic life								
Dissolved Solids and Salinity	250 mg/l for chlorides and sulfates in domestic water supply.								
	<table border="0" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Natural Salinity %</th> <th style="text-align: center;">% Variation Permitted</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">0-3.5</td> <td style="text-align: center;">1</td> </tr> <tr> <td style="text-align: center;">3.5-13.5</td> <td style="text-align: center;">2</td> </tr> <tr> <td style="text-align: center;">13.5-35</td> <td style="text-align: center;">4</td> </tr> </tbody> </table>	Natural Salinity %	% Variation Permitted	0-3.5	1	3.5-13.5	2	13.5-35	4
Natural Salinity %	% Variation Permitted								
0-3.5	1								
3.5-13.5	2								
13.5-35	4								

Settleable and Suspended Solids and Turbidity	Fresh water fish and other aquatic life; settleable and suspended solids should not reduce the depth of the compensation point for photosynthetic activity
Sulfide	2 ug/l undissociated H ₂ S for fresh water aquatic life
Sulfate	Not to exceed ambient SO ₄ for all waters, as established by MLBC Research Lab
Temperature	No thermal pollution shall be discharged into any waters on the reservations
Dissolved O ₂	5.0 mg/l minimum for fresh water aquatic life
Pesticides	No measurable amounts of any pesticide or any other toxicant will occur in any surface or groundwater
pH	5-9 for domestic water supply 5.5-9.0 for fresh water aquatic life
Phenol	1 ug/l for all waters
Phosphorus	Not to exceed ambient total phosphorus for all water systems as established by MLBC Research Lab
Polychlorinate Biphenyls (PCB)	.001 ug/l for all waters
Phthalate esters	.1 ug/l for fresh water aquatic life
Selenium	10 ug/l for domestic water supply .01 X 96 hour LC ₅₀ for fresh water aquatic life
Silver	50 ug/l for domestic water supply .01 X 96 hour LC ₅₀ for fresh water aquatic life
Zinc	5 mb/l for domestic water supply .01 X 96 hour LC ₅₀ for fresh water aquatic life

- (b) Any and all man made or man induced regulation of water flow on or through any Reservation of the Mille Lacs Band of Chippewa Indians shall be subject to the stipulations set forth in this subchapter for the provision of adequate water quantities for the preservation and protection of natural resources.
- (c) No littering, refuse or garbage disposal will be permitted in any waters of the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, §§ 13, 14.
Band Statute 1163-MLC-21, T.II, §§ 13, 14.

Cross References

Litter, *see* 11 MLBS § 201.
Solid waste disposal, *see* 11 MLBS § 1001.

§ 119. Air-Policy and Goals.

The air quality within the reservations is affected by many pollutants and chemicals, which may travel through the atmosphere from distant sources. These chemicals and pollutants are deposited on reservation lands and waters, the result being a direct threat to the natural resources of the reservation. Pursuant to Class I-Air Quality.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 15.
Band Statute 1163-MLC-21, T. II, § 15.

§ 120. Air-Definitions.

"BACT, best available control technology" means that method of limiting emissions to the minimum amount possible.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 16.
Band Statute 1163-MLC-21, T.II, § 16.

§ 121. Air-Standards.

These standards will be those as set forth by 42 U.S.C. § 7474 and the Clean Air Act. (42 U.S.C. § 7401 et seq.)

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 17.
Band Statute 1163-MLC-21, T.II, § 17.

§ 122. Soils-Policy and Goals.

The soils within the jurisdiction of the Mille Lacs Band of Chippewa Indians are an integral part of the total natural resource spectrum. Fish, furbearers, wild rice and other wildlife are directly affected by the types of, and the maintenance of, vegetative cover upon the soils. The management of these soils will be within this context. In addition, alternatives to chemical usage upon the soils shall be considered the policy of the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 18.
Band Statute 1163-MLC-21, T.II, § 18.

§ 123. Soil-Definitions.

"Soil" means all soils, metals, minerals, gases, liquid, gravels or other elemented or complexed materials, in any physical state, which lie on or in the earth's surface to a depth of 15 feet.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 19.
Band Statute 1163-MLC-21, T.II, § 19.

§ 124. Soils-Standards.

- (a) Natural erosion rectification measures, such as seeding, planting or otherwise establishing vegetative cover, will be utilized by the landowner.
- (b) Permits will be required for any project or development other than farming which involves excavation, soil removal or disposition, and shall include provisions for the seeding or planting to establish vegetative cover.
- (c) Agricultural lands shall be protected from wind and water erosion through the use of sound agricultural principles, including but not limited to, terracing, tree breaks, grass waterways and maintaining vegetative cover on tilled lands during the non-growing season.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 20.
Band Statute 1163-MLC-21, T.II, § 20.

§ 125. Subsurface Resources.

Groundwater-refer to 11 MLBS § 103. All other subsurface resources will be managed at the discretion of the Mille Lacs Band of Chippewa Indians-Department of Natural Resources. Management will include analysis of potential environmental effects for all exploration, mining, or extractions, which are or may be practiced on the lands under the jurisdiction of the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 21.
Band Statute 1163-MLC-21, T.II, § 21.

§ 126. Forestry-Policy and Goals.

The forestry resource on the lands under the jurisdiction of the Mille Lacs Band of Chippewa Indians will be managed to preserve and protect said lands in a perpetually productive state. This will be done by applying sound silvicultural practices to the harvesting of the timber, and by making provision for new forest growth as timber is removed. The guiding document shall be CFR 25, Part 141, Forestry Manual 53 BIAM, dated June 21, 1978, and supplements. Any superseding documents pertaining to forestry management on Indian lands will be subject to the approval of the governing body of the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 22.
Band Statute 1163-MLC-21, T.II, § 22.

Cross References

Firewood harvest, *see* 11 MLBS § 2401.

§ 127. Forestry-Standards.

- (a) No clearcutting of timber will be permitted within a 100-foot border of any lake, pond or river.
- (b) No clearcutting of timber will be permitted within 100 feet of any road.
- (c) Permits for logging will include stipulations for the re-seeding of logged area and logging equipment trails.
- (d) Users of insecticides, herbicides, or any other chemical or pesticides for forestry management activities will be required to obtain a permit.

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 23.
Band Statute 1163-MLC-21, T. II, § 23.

§ 128. State Civil Jurisdiction.

Any person, upon a violation of Subchapter 1 or 2 of this chapter, may bring a civil cause of action in the appropriate state court seeking damages pursuant to the provisions of Title 28, United States Code, § 1360; P.L. 83-280 which states:

"Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this Section."

Historical and Statutory Notes

Source:

Band Statute 1091-MLC-24, § 24.
Band Statute 1163-MLC-21, T. II, § 24.

Cross References

Actions to recover penalties or damages, environmental protection, *see* 11 MLBS § 17.

SUBCHAPTER 3

LITTER

Section

- 201. Definitions.**
- 202. Littering.**
- 203. Littering on Highways.**
- 204. Littering in Natural Areas.**
- 205. Litter Removal In Lieu of Forfeiture.**

Cross References

Water standards, Environmental Protection Ordinance, *see* 11 MLBS § 118.

§ 201. Definitions.

“**Litter**” means things lying about in disorder; bits or scraps of rubbish scattered about; untidiness, disorder; to make messy or untidy with things scattered about; to scatter about carelessly.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 8.09.

§ 202. Littering.

Whoever unlawfully deposits garbage, rubbish, offal, or the body of a dead animal, or other litter in or upon any public or tribal highway, public waters or the ice thereon, public or tribal lands, or without the consent of the owner, private land, or water or ice thereon, shall be subject to a forfeiture not to exceed \$25.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 56.

§ 203. Littering on Highways.

- (a) Any person who shall throw, deposit, place or dump, or cause to be thrown, deposited, placed or dumped upon any street or highway or upon any public, tribal or privately owned land adjacent thereto without the owner's consent any snow, ice, glass bottle, glass, nails, tacks, wire, cans, garbage, swill, papers, ashes, refuse, carcass of any dead animal, offal, trash or rubbish or any other form of offensive matter or any other substance likely to injure any person, animal or vehicle upon any such street or highway shall be subject to a forfeiture not to exceed \$500.00.
- (b)
 - (1) Any person who drops, or permits to be dropped or thrown, upon any highway any of the material specified in subsection (a), shall immediately remove the same or cause it to be removed.
 - (2) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.
- (c) No person shall drop or hurl any destructive or injurious material or object at or upon any motor vehicle upon any highway or the occupants thereof.

(d)

- (1) Any person who violates any provision of subsection (b) or (c), shall be subject to a forfeiture not to exceed \$500.00.
- (2) Any person who violates any provision of subsection (a) or (b)(1) shall be subject to a forfeiture not to exceed \$5,000.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6§§57, 58.03.

Cross References

Solid waste, disposal onto highways or roads, *see* 11 MLBS § 1009.

§ 204. Littering in Natural Areas.

- (a) No person shall drain, throw or deposit upon the lands and waters within a natural area designated by the Commissioner of Natural Resources any substance that would mar the appearance, create a stench, destroy the cleanliness or safety of the land, or would be likely to injure any animal, vehicle, or person traveling upon those lands and waters. The operator of a vehicle or watercraft, except a school bus or a vehicle transporting passengers for hire and regulated by the Interstate Commerce Commission, shall not permit articles to be thrown or discarded from the vehicle upon any lands or waters within a natural area so designated.
- (b) Any person who, within the limits of any natural area designated by the Commissioner of Natural Resources shall willfully cut, injure, or destroy any live tree, shrub, timber, evergreen, or ornamental plant of any kind, or who shall willfully injure, remove, destroy, deface, or mutilate any guide-board, guide-post, furniture, fixture, improvement, monument, tablet, or other public or tribal property shall be subject to a forfeiture not to exceed \$5,000.00.
- (c) The Commissioner of Natural Resources is delegated the authority to designate natural areas for the purpose of subsections (a) and (b). Such areas shall have positive outdoor values which may include but need not be limited to recreation, hunting, fishing, trapping, ricing, scenic beauty, or spiritual significance.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 58.

§ 205. Litter Removal In Lieu of Forfeiture.

The Court of Central Jurisdiction may, in lieu of imposing the forfeiture provided for by 11 MLBS §§ 202 and 203, permit any person to remove litter from public or tribal lands under the direction of the Commissioner of Natural Resources for a period of time to be set by the Court.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 58.03.

CHAPTER 2

SOLID WASTE DISPOSAL AND RECYCLING

Section

- 1001. Definitions.**
- 1002. Solid Waste Handling and Storage.**
- 1003. Responsibility of Owner or Occupant.**
- 1004. Containers.**
- 1005. Timely Transfer to Collection or Disposal Sites.**
- 1006. Dumping.**
- 1007. Collection or Disposal Site Operations.**
- 1008. Waste from Outside Band Territory.**
- 1009. Disposal onto Highways or Roads.**
- 1010. Public Nuisances and Health Hazards.**
- 1011. Hazardous Waste Disposal.**
- 1012. Recycling.**
- 1013. Collection and Transport.**
- 1014. Fees.**
- 1015. Powers of Tribal Police and Conservation Officers.**
- 1016. Sanctions.**
- 1017. Administration.**
- 1018. Sovereign Immunity.**

Historical and Statutory Notes

Band Statute 1233-MLC-20, T.II, § 10 provides: "Section 10. Severability. If any provision of this Title or its application to any person or set of circumstances is held invalid, the remainder of the Title or its application to other persons or circumstances shall not be affected."

Cross References

Water standards, Environmental Protection Ordinance, *see* 11 MLBS § 118.

§ 1001. Definitions.

The following definitions shall apply to the terms listed as used throughout this chapter:

- (a) **“Collection site”** means those places at which the Band or Band-licensed collectors receive solid waste.
- (b) **“Collector”** means any natural or legal person, including such person's employees and agents, who gather another person's solid waste.
- (c) **“Hazardous waste”** means any solid waste deemed hazardous by the U.S. Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, (42 U.S.C.A. § 6901 et seq.) as amended.
- (d) **“Resident”** means any person who has a permanent residence or place of business within the territorial jurisdiction of the Mille Lacs Band, including temporary or seasonal residences or businesses.
- (e) **“Solid waste”** means all waste, garbage, rubbish, trash and other discarded solid waste material resulting from residential, commercial, agricultural, industrial, community and other human activities, including hazardous waste and liquid waste contained within solid waste, but excluding sewage and related human waste.
- (f) **“Solid waste operator”** means Mille Lacs Band employees, appointees or contractors who are responsible for the operation and maintenance of any solid waste collection or disposal sites within the territorial jurisdiction of the Band.
- (g) **“Transfer station”** means the existing solid waste collection site owned by the Mille Lacs Band for the purpose of collecting, transporting, and disposing of solid waste.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 2.

§ 1002. Solid Waste Handling and Storage.

Solid waste within the territorial jurisdiction of the Mille Lacs Band shall be handled, stored, collected, transported, transferred, processed and disposed of in accordance with the provisions of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 3.

§ 1003. Responsibility of Owner or Occupant.

Except as otherwise provided in this chapter, the owner or occupant of any premises shall be responsible for the sanitary storage of all of the solid waste produced by such person and accumulated at the premises. Unless otherwise provided for in a written rental agreement or lease, the tenant of any single-unit detached residence and the landlord of any multi-unit residence shall be responsible for the provision and maintenance of solid waste storage containers pursuant to 11 MLBS § 1004.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 3.01.

§ 1004. Containers.

Solid waste shall be stored in durable, rust resistant, nonabsorbent, water tight, rodentproof and easily cleanable containers possessing a close-fitting, insect-tight cover.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T. II, § 3.02.

§ 1005. Timely Transfer to Collection or Disposal Sites.

Solid waste shall be transferred to Band approved collection sites or E.P.A. approved disposal sites in a timely manner, in order to prevent noxious odors and other public nuisances or health conditions, by the person responsible for the provision and maintenance of solid waste storage containers.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 3.03.

§ 1006. Dumping.

No person shall leave, deposit, or dump solid waste within the territorial jurisdiction of the Mille Lacs Band, except that solid waste may be temporarily deposited in storage containers pursuant to 11 MLBS §§ 1002 to 1005 and may be deposited at approved collection and disposal sites.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 4.

§ 1007. Collection or Disposal Site Operations.

Solid waste disposal at approved collection or disposal sites within the territorial jurisdiction of the Band shall only be in the manner and during the posted daytime hours of operation prescribed by the Public Works Commission.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 4.01.

§ 1008. Waste from Outside Band Territory.

No person shall dispose of solid waste generated on lands outside the territorial jurisdiction of the Band, nor shall a non-resident dispose of any solid waste, on lands within the territorial jurisdiction of the Band without the permission of the Band.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 4.02.

§ 1009. Disposal onto Highways or Roads.

No person shall dispose of solid waste from any stopped or moving vehicle onto federal, state, county or Band highways, roads or right-of-ways within the territorial jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 4.03.

Cross References

Littering on highways, *see* 11 MLBS § 203.

§ 1010. Public Nuisances and Health Hazards.

No person shall dispose of or burn solid waste on any lands within the territorial jurisdiction of the Band in a manner that is likely to cause a public nuisance or health hazard.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 4.04.

Cross References

Nuisance, *see* 24 MLBS § 301.

§ 1011. Hazardous Waste Disposal.

Hazardous waste shall not be disposed of on lands within the territorial jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 4.05.

§ 1012. Recycling.

The Public Works Commission shall seek assistance from county, state, federal and other sources for the purposes of developing and maintaining a waste recycling program and collection site for the Band for the purposes of reducing waste and disposal costs and conserving natural resources. The Commission shall encourage residents to cooperate with waste recycling programs.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 5.

§ 1013. Collection and Transport.

- (a) All solid waste shall be transported in a manner which prevents the waste from leaking, blowing or falling off of the transport vehicle.
- (b) Commercial vehicles or containers used for the collection and transportation of solid waste shall be covered, leak-proof, durable and of easily cleanable construction. The vehicles and containers shall be cleaned regularly in order to prevent nuisances, pollution and insect breeding and shall be maintained in good repair.

- (c) Commercial collectors and transporters of solid waste shall be required to obtain a license from the Public Works Commission prior to commencing any collection or transportation activities on lands within the territorial jurisdiction of the Mille Lacs Band. Obtaining a license pursuant to this Section does not exempt a person or entity from any other provision of the Mille Lacs Band Statutes Annotated requiring a license or permit in order to conduct business.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 6.

§ 1014. Fees.

The Public Works Commission shall establish fees to be charged to individuals and businesses for the disposal of solid waste at designated collection and disposal sites. These fees shall be reviewed at least annually by the Commission.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 7.

§ 1015. Powers of Tribal Police and Conservation Officers.

All Mille Lacs Band Tribal Police and Conservation Officers shall be empowered to enforce this chapter.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 8.

§ 1016. Sanctions.

- (a) A fine, not to exceed \$5000.00, may be imposed for each violation of this chapter. Each day during which a violation exists shall constitute a separate violation. Any personal property, including vehicles and other equipment, which has been used in connection with a violation may be seized and forfeited.
- (b) In addition to any judicially imposed sanctions, the Public Works Commission may revoke the license of any violator of this chapter.

- (c) Nothing herein shall prevent the Mille Lacs Band or an individual party from bringing suit in the Court of Central Jurisdiction in order to obtain injunctive relief or money damages because of a violation of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 8.

Cross References

Nuisance, *see* 24 MLBS § 301.

§ 1017. Administration.

The Mille Lacs Band of Chippewa Indians-Public Works Commission shall temporarily be responsible for the administration of this chapter and of any Band-owned solid waste collection facilities or systems.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 1.

Cross References

Public Works Commission, *see* 13 MLBS § 1.

§ 1018. Sovereign Immunity.

Nothing contained in this chapter shall be construed as a waiver of sovereign immunity by the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.II, § 9.

CHAPTER 3

NATURAL RESOURCE PROTECTION CODE

Subchapter

1. General Provisions

2. Fishing

Section

2001

2101

3. Hunting and Trapping	2201
4. Wild Rice	2301
5. Firewood Harvest	2401
6. Fires	2501
7. Enforcement	2601

Historical and Statutory Notes

The Preamble of Band Statute 1162-MLC-50 provides: "It is enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Chippewa Indians, for the purposes of preserving the political integrity, protecting economic security and promoting the health and welfare of Band members, a Code for the regulation and protection of natural resources which regulate all hunting, trapping, fishing and gathering of wild rice within the territories governed by the Mille Lacs Band and this Code shall be enforced against Band members and others under the jurisdiction of the Band." Band Statute 1162-MLC-50, §§ 1 and 4.12 provide:

"Section 1. Scope of Amending Provision. Band Statutes 1017-MLC-7, 1030-MLC-7 are hereby repealed in their entirety and replaced by the provisions of this act."

"Section 4.12. Section Headings. Section headings and titles are provided for the convenience of the reader.

They are not part of the statute and do not modify the language otherwise stated." Band Ordinance 07-97 (Chapter 5, § 4001 et seq., of this Title), § 1.08 provides: "All Band ordinances, resolutions and orders inconsistent with this ordinance are hereby repealed. To the extent that this ordinance imposes greater restrictions than those contained in any other ordinance, resolution or order, the provisions of this ordinance shall govern."

Cross References

1837 Treaty Conservation Code for the Minnesota Ceded Territory, *see* 11 MLBS § 4001.

Great Lakes Indian Fish and Wildlife Compact, *see* 2 MLBS § 1151

Purple loosestrife control, *see* Nat. Res. Comm. Orders 108-89, 133-90.

Search lights (sky trackers), regulation of use, *see* Nat. Res. Comm. Order 172-93.

Shoreland area management, *see* Nat. Res. Comm. Order 170-93.

SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 2001. Definitions.**
- 2002. Powers of Commissioner of Natural Resources.**
- 2003. Duties of Commissioner of Natural Resources.**
- 2004. Geographical Restriction of Regulations.**
- 2005. Off-Reservation Regulations.**
- 2006. Orphan Animals.**
- 2007. Taking for Religious or Ceremonial Purposes.**

2008. Medicinal Plants.

§ 2001. Definitions.

As used in this chapter, the following terms shall have the meanings given to them in this section:

- (a) **“Band Fishing License”** means a license issued by the Commissioner of Natural Resources to a member of the Mille Lacs Band of Chippewa, which license authorizes him to fish in accordance with the provisions of this chapter.
- (b) **“Band Hunting License”** means a license issued by the Commissioner of Natural Resources to an enrollee of the Mille Lacs Band of Chippewa Indians, which license authorizes him to hunt or trap in accordance with the provisions of this chapter.
- (c) **“Band Ricing License”** means a license issued by the Commissioner of Natural Resources to an enrollee of the Mille Lacs Band of Chippewa Indians, which license authorizes him to gather wild rice in accordance with the provisions of this chapter.
- (d) **“Big Game”** means deer, bear, elk and moose.
- (e) **“Closed Season”** means the period during which protected wild animals may not be taken.
- (f) **“Commercial Fishing Permit”** means a permit issued by the Commissioner of Natural Resources to a Mille Lacs Band of Chippewa Indians enrollee under 11 MLBS § 2114.
- (g) **“Commercial Purposes”** means the taking of fish for barter or sale.
- (h) **“Commercial Taking”** means the taking of big game, small game or fur bearing animals for the purpose of barter or sale of furs, pelts, hides or the flesh of such animals.
- (i) **“Elderly”** means Band member or non-Band member who is enrolled in a federally recognized tribe, shall be defined as one who has attained the chronological age of fifty-five (55).
- (j) **“Firearm”** means any gun from which a shot or projectile is discharged by means of an explosive, gas or compressed air.
- (k) **“Fur Bearing Animals”** mean beaver, mink, marten, raccoon, fisher, fox, wolf, muskrat and otter.

- (l) **“Game Fish”** include brook trout, brown trout, crappie, grayling, lake trout, large mouth bass, muskellunge, northern pike, rainbow trout, rock bass, sauger, small mouth bass, sturgeon, sunfish and walleye.
- (m) **“Migratory Birds”** mean any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in 50 C.F.R. section 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists or is composed in whole or in part of any such bird or any part, nest or egg thereof.
- (n) **“Mille Lacs Reservation”** means all land within the exterior boundary described in the Treaty of 1855, to wit: "the following fractional townships, viz: forty-two north, of range twenty-five west; forty-two north, of range twenty-six west; and forty-two and forty-three north, of range twenty-seven west; and also, the three islands in the southern part of Mille Lacs, exterior boundary of Sandy Lake Reservation as described in the Treaty of 1855, all contiguous waters, and all other trust properties under the jurisdiction of the Mille Lacs Band, its enrolled members, and of the Minnesota Chippewa Tribe and delegated to the Non-Removable Mille Lacs Band of Chippewa Indians."
- (o) **“Motor Vehicle”** means self-propelled motor driven vehicles.
- (p) **“Non-Band Fishing License”** means a license issued by the Commissioner of Natural Resources to any member of a federally recognized Tribe who is not enrolled in the Mille Lacs Band of Chippewa Indians, which license authorizes him to fish in accordance with this chapter.
- (q) **“Non-Band Hunting License”** means a license issued by the Commissioner of Natural Resources to any member of a federally recognized Tribe who is not enrolled in the Mille Lacs Band of Chippewa Indians, which license authorizes him to hunt in accordance with this chapter.
- (r) **“Non-Band Ricing License”** means a license issued by the Commissioner of Natural Resources to a member of a federally recognized Tribe who is not enrolled in the Mille Lacs Band of Chippewa Indians which license authorizes him to gather wild rice in accordance with this chapter.
- (s) **“Non-Game Fish”** include buffalo fish, burbot, bullheads, carp, catfish, coho, dogfish, gar, quillback, perch, sheephead, suckers, tulibee, and whitefish.
- (t) **“Non-Indian Fishing License”** means a license issued by the Commissioner of Natural Resources to anyone who is not eligible for a license under 11 MLBS § 2101 or 2107, which authorizes such person to fish in accordance with this chapter.
- (u) **“Non-Indian Hunting License”** means a license issued by the Commissioner of Natural Resources to anyone who is not eligible for a license under 11 MLBS §§ 2201 or 2208, which authorizes such person to hunt in accordance with this chapter.

- (v) **“Non-Indian Ricing License”** means a license issued by the Commissioner of Natural Resources to anyone who is not eligible for a license under 11 MLBS §§ 2301 or 2303, which authorizes such person to gather wild rice in accordance with this chapter.
- (w) **“Non-Removable or Mille Lacs Band of Chippewa”** shall be the duly constituted and successor tribal government of the Mille Lacs Band.
- (x) **“Open Season”** means the period during which wild animals may be taken.
- (y) **“Paddy Rice”** means that wild rice crop grown in artificially constructed paddies.
- (z) **“Personal Use”** means the taking of fish for any purpose other than commercial purposes.
- (aa) **“Possession”** means both actual and constructive possession and any control of the things referred to.
- (bb) **“Protected Wild Animals”** shall include all wild animals which are accorded some measure of protection in the name or manner of taking.
- (cc) **“Small Game”** means all wild animals and birds not defined as big game or fur bearing animals or game or non-game fish.
- (dd) **“Special Permit”** means a permit issued by the Commissioner of Natural Resources, or his designee, exempting the recipient from one or more of the regulations contained herein, upon a finding by him that granting of the exemption will not endanger the resource.
- (ee) **“Taking”** or **“Hunting”** shall include pursuing, shooting, killing, capturing, trapping, snaring and netting wild animals and all lesser acts such as intentionally disturbing, harrying, worrying or placing, setting drawing, using any net, trap or other device to take wild animals, and includes every attempt to take, every act of assistance to any other person in taking or attempting to take wild animals.
- (ff) **“Transport”** or **“Transportation”** means carrying or moving by any instrumentality, attempting to do so, or accepting or receiving wild animals for transportation or shipment.
- (gg) **“Wild Animals”** means all living creatures, not human, wild by nature, endowed with sensation and power of voluntary motion, and includes quadruped, mammals, birds, fish, amphibious reptiles, crustaceans and mollusks.
- (hh) **“Wild Rice”** means that rice crop which grows naturally or as a result of reseeded in the natural lakes and waters, including lakes resulting from flood control structures, of the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 2.

Cross References

Game violations, criminal offenses, *see* 24 MLBS § 1256.

"Wetland" defined, *see* Nat. Res. Comm. Order 162-92.

§ 2002. Powers of Commissioner of Natural Resources.

The Commissioner of Natural Resources shall have powers of regulation over all matters of land, air, water, environmental protections and anything and everything related to the conservation and protection of natural resources under the jurisdiction of the Mille Lacs Band of Chippewa Indians.

- (a) He shall have power to open and close all seasons for hunting, fishing, trapping, and the gathering of wild rice by the issuance of a Commissioner's order with the concurrence of the Spiritual Advisor on all matters related to his duties.
- (b) He shall be responsible for the development of a natural resource management plan and certify to the feasibility of all economic development plans which involve the natural resources with the concurrence of the Spiritual Advisor.
- (c) He shall have the power to make any and all regulations for the taking, possession and transportation of wild animals, fish, bird or grain from trust territory under the jurisdiction of the Band.
- (d) The Commissioner shall not possess authority over law enforcement officials under the jurisdiction of the Band.
- (e) The Commissioner may do all things deemed by him as desirable in the preservation, protection and propagation in their natural state of all desirable species of wild animal, bird, or fish upon the concurrence of the Spiritual Advisor.
- (f) The Commissioner shall have the power to acquire through gift, lease, purchase, in the name of the Band, lands or any interest in lands deemed suitable for the future interests of the Band.
- (g) He shall have power to negotiate contracts in the furtherance of natural resource development within the jurisdiction of the Band.
- (h) He shall have authority to secure funds from the government of the United States or any private foundation for the purpose of fulfilling his legal mandate.

- (i) He shall be a member of the Administration Policy Board.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 3.

Cross References

Buck hunting season, *see* 11 MLBS § 2213.
Commercial fishing regulations, *see* 11 MLBS § 2115.
Doe hunting season, *see* 11 MLBS § 2212.
Elk or moose season, *see* 11 MLBS § 2215.
Fishing seasons, *see* 11 MLBS § 2107.
Fur bearing animal season, *see* 11 MLBS § 2216.
Hunting and trapping seasons, generally, *see* 11 MLBS § 2228.
Migratory birds, regulatory authority, *see* 11 MLBS § 2285.
Off reservation regulations, *see* 11 MLBS §§ 2004, 2005.
Small game hunting season, *see* 11 MLBS § 2209.

§ 2003. Duties of Commissioner of Natural Resources.

The Commissioner of Natural Resources shall perform all duties and responsibilities and shall exercise all authority delegated to him by the Mille Lacs Band of Chippewa Indians by this chapter, including, but not limited to:

- (a) Issuance of all Band licenses and permits authorized by this chapter.
- (b) Proposal of amendments to this chapter and adoption of additional regulations by Commissioner's Order as found necessary.
- (c) Setting of seasons where none are specifically provided, closing or shortening existing seasons when necessary for the preservation of the resource, or extending or opening seasons when it is determined that it will not harm the resource.
- (d) Setting limits on the manner or amount of taking of fish, game, or wild rice, when necessary for the conservation of the resource, or altering limits specifically provided by these regulations.
- (e) Waiving the fee for issuance of any license or permit authorized by this chapter to elderly Band members and elderly non-Band members who are enrolled in a federally recognized tribe.
- (f) Reviewing on an annual basis or more frequently the numbers of each type of permit or license outstanding, with particular emphasis on any commercial permits or specific permits which may be outstanding, to determine whether or not it is in the best interests of conservation to continue such licenses.

- (g) Keeping and maintaining an up-to-date and accurate list of all persons to whom each type of permit and license has been issued.
- (h) Revocation of any permit or license authorized by these regulations upon conviction of any violation of the Conservation Code of this or any other Minnesota Chippewa Tribe Reservation.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 3.01.

§ 2004. Geographical Restriction of Regulations.

All sections of the Mille Lacs Band Statutes Annotated and all Commissioner's Orders issued thereunder pertaining to fishing, spearing, netting, hunting, trapping, or ricing which do not by their terms apply to the off-reservation ceded territory as described by 2 MLBS § 107, apply only to activities undertaken on the Mille Lacs Reservation as defined by 11 MLBS § 2001(n).

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.60.

§ 2005. Off-Reservation Regulations.

The Commissioner of Natural Resources is delegated the authority to promulgate by Commissioner's Order regulations controlling member fishing, spearing, netting, hunting, trapping, and ricing in the off-reservation territory as described by 2 MLBS § 107.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50. § 4.61.

Cross References

Migratory bird hunting off reservation, memorandum agreement with U.S. Fish and Wildlife Service, *see* Nat. Res. Comm. Order 144-90.

Taking fish by angling off of tribal lands, *see* Nat. Res. Comm. Order 171-93.

§ 2006. Orphan Animals.

Any live wild animal captured by any person and which is too young, too injured, or too ill to reasonably be expected to survive if left uncared for and which cannot lawfully be killed under

this chapter or any Commissioner's Order issued hereunder, shall be deemed to be under the protection of the Band and shall be reported by the finder within 24 hours of capture to the Commissioner of Natural Resources. The Commissioner shall determine the proper disposition of the animal which may include but is not limited to placement with the finder, placement with another individual or agency, return to the wild, or killing.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 13.

Cross References

Possession of live migratory game birds, see 11 MLBS § 2274.

§ 2007. Taking for Religious or Ceremonial Purposes.

Any Band member may apply for a permit, on forms prescribed by the Commissioner of Natural Resources, to take for religious or ceremonial purposes any plant or animal which it would be otherwise unlawful to take under this chapter or any Commissioner's Order issued hereunder. A permit for such taking, specifying the name and other identifying information of the permittee, the species to be taken, the sex of any animal to be taken, the locality where the taking is permitted, the dates upon which the taking is permitted, and other information deemed pertinent by the Commissioner of Natural Resources, may be issued by the Commissioner upon receipt of a completed application form and approval of the Elderly Advisory Board, the Chief Executive of the Band, and the Commissioner. No such permits may be granted if the Elderly Advisory Board determines that no bona fide religious or ceremonial purpose would be served by the taking, if the Chief Executive determines that the general interests of the tribe would be injured by the taking, or if the Commissioner determines that conservation interests would be injured by the taking.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 15.

Cross References

Endangered species, use for religious purposes, *see* Nat. Res. Comm. Order 84-88.

§ 2008. Medicinal Plants.

Individual members may take naturally occurring plants for medicinal purposes without a permit.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 15.01.

SUBCHAPTER 2

FISHING

Section

- 2101. Band License.**
- 2102. Non-Band License.**
- 2103. Non-Indian License.**
- 2104. License Fees.**
- 2105. Minnesota Licenses.**
- 2106. Constructive Knowledge.**
- 2107. Specific Regulations-Fishing for Personal Use.**
- 2108. Seasons.**
- 2109. Closure.**
- 2110. Rare and Endangered Species.**
- 2111. Spearing and Netting Permits.**
- 2112. Minors.**
- 2113. Transportation.**
- 2114. Commercial Fishing.**
- 2115. Specific Regulations-Commercial Fishing.**

Cross References

Taking fish by angling off of tribal lands, *see* Nat. Res. Comm. Order 171-93.

§ 2101. Band License.

Every enrollee of the Mille Lacs Band of Chippewa Indians who takes fish within the Mille Lacs Reservation shall have in his or her possession a proper Band fishing license. This license must be in his or her possession whenever taking, possessing or transporting fish within the Reservation and whenever possessing or transporting fish anywhere within the United States, which fish were lawfully taken within the Reservation.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50. § 5.

§ 2102. Non-Band License.

If the Commissioner of Natural Resources determines that it is in the best interest of the Mille Lacs Band of Chippewa Indians, it may issue a non-Band fishing license to any enrolled member of a federally recognized Indian tribe who is not enrolled with the Band. Such a permit must be in the possession of any such person who takes fish within the Mille Lacs Reservation or who transports or possesses fish lawfully taken on the Reservation any place within the United States.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.01.

§ 2103. Non-Indian License.

If the Commissioner of Natural Resources determines that it is in the best interest of the Mille Lacs Band of Chippewa Indians, it may issue non-Indian fishing licenses in numbers determined by him to be suitable. The Commissioner may also, by Commissioner's Order, establish resident and non-resident classes of non-Indian licenses. Any license issued under this section must be in the possession of the person to whom issued when taking fish within the Mille Lacs Reservation or transporting or possessing fish lawfully taken on the Reservation any place within the United States.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.02.

§ 2104. License Fees.

Fees may also be charged by the Commissioner of Natural Resources for the issuance of the permits and licenses required by this statute. The Commissioner of Natural Resources may in his discretion charge a greater fee for a non-Band fishing license than for a Band fishing license. The Commissioner may also in his discretion charge a greater fee for a non-Indian fishing license than for a Band fishing license and may charge different fees and establish different conditions and different numbers of resident and nonresident classes of non-Indian licenses.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.03.

§ 2105. Minnesota Licenses.

No Indian shall be required to purchase or possess a Minnesota fishing license when fishing within the Mille Lacs Reservation or when possessing or transporting fish, lawfully taken within the Reservation, anywhere within the United States.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.04.

§ 2106. Constructive Knowledge.

All rules and regulations relating to the taking, possession or transportation of fish shall be as adopted in this chapter subject to amendment on an annual basis by the Commissioner of Natural Resources and all persons accepting Band, non-Band or non-Indian licenses shall be deemed to know of any such modifications, whether or not the licensee has actual knowledge.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.05.

§ 2107. Specific Regulations-Fishing for Personal Use.

The following regulations are hereby imposed on the taking for personal use of game and non-game fish:

- (a) No fish may be taken by means of explosives, drugs, poisons, lime, medicated bait or other deleterious substances.
- (b) There shall be no taking of game fish for any purpose by use of gill nets except where such taking is for personal use.
- (c) Game fish season shall be closed between March 31 and the closest Saturday to May 15. No gill nets shall be used during this period for the taking of any fish.
- (d) There shall be no netting in rivers or streams or within 500 feet of the mouth of rivers and streams between March 31 and June 15 of each year. There shall also be no netting in areas duly closed by the Commissioner of Natural Resources.
- (e) Nets for personal use shall be limited to 100 feet in length per license.
- (f) Muskellunge shall not be taken with a spear.

- (g) Fish houses must be conspicuously marked with the licensee's name and license number.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.06.

§ 2108. Seasons.

Seasons for the taking of the various game species of fish may be shortened by the Commissioner of Natural Resources.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.07.

§ 2109. Closure.

The Commissioner of Natural Resources may in his discretion close specified lakes or spawning areas to all fishing if he determines that further fishing in such lakes or spawning areas will harm the resource, or may close such lakes or spawning areas to fishing for specified species of fish when he determines that such species will be endangered by further taking.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.08.

§ 2110. Rare and Endangered Species.

There shall be no taking of any species of fish determined by the Commissioner of Natural Resources to be rare or endangered.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.09.

Cross References

Endangered and threatened species, *see* Nat. Res. Comm. Order 37-86.

§ 2111. Spearing and Netting Permits.

It shall be illegal for any person under the jurisdiction of the Band to participate in fishing, spearing or netting activities at any time without a valid Band permit. It shall be a civil offense for any person, of any age, to participate in any fishing, spearing, or netting activities without a valid Band permit.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.10.

§ 2112. Minors.

It shall be illegal for any adult under the jurisdiction of the Band over the chronological age of eighteen (18) to engage any person of a lesser chronological age in any fishing, netting, or spearing activity when said minor does not personally possess a valid permit.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.11.

§ 2113. Transportation.

- (a) It shall be illegal for any person under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians to transport without just cause, by any means, any game fish taken, by any means for the purpose of personal financial gain.
- (b) Just cause shall mean a cause outside legal or cultural cause which must be based on reasonable grounds, and these must be a fair and honest cause or reason, regulated by good faith.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 5.12.

§ 2114. Commercial Fishing.

Fish may not be taken for commercial purposes within the Reservation, provided, that upon proper application the Commissioner of Natural Resources may in his discretion issue a commercial fishing permit for non-game fish species to Band members upon determination that a limited amount of commercial fishing will not harm the resource. The Commissioner of Natural

Resources shall strictly regulate the manner of fishing, the type of fish taken, and the amount of the take under such a permit.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 6.

§ 2115. Specific Regulations-Commercial Fishing.

All persons operating under a commercial fishing permit as provided by 11 MLBS § 2114 shall be subject to the following regulations regarding transportation of fish:

- (a) A person operating under a commercial fishing permit shall have in his possession at all times both the commercial fishing permit and his Band fishing license.
- (b) All nets used for taking fish must be identified as Indian nets.
- (c) Each permittee may use no more than 600 feet of net for commercial purposes.
- (d) Any person holding a personal netting license in addition to a commercial permit shall be limited to using a total of 600 feet for all purposes.
- (e) All non-game fish taken under the valid commercial fishing permit may be possessed in quantities prescribed in such license and bought, sold, or transported during any season designated by the Commissioner of Natural Resources. Such fish may be frozen or cured during open season, and when so cured or frozen may be transported, bought, or sold at any time.
- (f) All live game fish taken incidentally in a commercial fishing operation shall be released immediately to the waters from which taken. All dead or injured game fish may be retained for personal use.
- (g) When shipping non-game fish taken under a Band fishing license and commercial fishing permit, the parcel must be plainly marked on the outside stating the name, address, and license number of the shipper and the kind and number of such fish contained in the package. The waybill or receipt issued by any common carrier to a shipper shall specify the pounds and species of such fish so shipped.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 6.01.

SUBCHAPTER 3
HUNTING AND TRAPPING

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PART A
GENERAL PROVISIONS

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§ 2201. Band License.

Every enrollee of the Mille Lacs Band of Chippewa Indians who hunts or traps within the Mille Lacs Reservation must have in his or her possession a proper Band hunting license. This license must be in his or her possession at all times when carrying firearms within the Reservation, shooting, trapping or taking within the Reservation any small game, big game or fur bearing animals, or when possessing or transporting any place in the United States any small game, big game or fur bearing animal lawfully taken within the Reservation.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.

§ 2202. Non-Band License.

If the Commissioner of Natural Resources determines that it is in the best interests of the Mille Lacs Band of Chippewa Indians, he may issue a non-Band hunting license to any Indian enrolled in a federally recognized Tribe who is not enrolled with the Mille Lacs Band. Such license must be in the possession of any such person who carries firearms on the Reservation or who shoots, traps or takes within the Reservation any small game, big game or fur bearing animal or who possesses or transports any place in the United States any small game, big game or fur bearing animal lawfully taken within the Reservation.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.01.

§ 2203. Non-Indian License.

If the Commissioner of Natural Resources determines that it is in the best interests of the Mille Lacs Band of Chippewa Indians, he may issue non-Indian hunting licenses in numbers determined by him to be suitable. The Commissioner may also, by Commissioner's Order, establish resident and nonresident classes of non-Indian license. Any license issued under this section must be in the possession of the person to whom issued when carrying firearms on the Reservation or when shooting, trapping, or taking within the Reservation any small game, big game or fur bearing animal or when possessing or transporting any place in the United States any small game, big game or fur bearing animal lawfully taken within the Reservation.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.02.

§ 2204. License Fees.

Fees may be charged in the discretion of the Commissioner of Natural Resources for the issuance of licenses required under 11 MLBS §§ 2201 and 2202. The Commissioner of Natural Resources may charge a higher fee for the issuance of a non-Band license than for a Band hunting license. The Commissioner may also in his discretion charge a greater fee for a non-Indian hunting license than for a Band hunting license and may charge different fees and establish different conditions and different numbers of resident and nonresident classes of non-Indian licenses.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.03.

§ 2205. Minnesota Licenses.

No Indian shall be required to purchase or possess a Minnesota big game, small game or trapping license when engaged in hunting or trapping of game within the Mille Lacs Reservation or when possessing or transporting game, lawfully taken, anywhere within the United States.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.04

§ 2206. Constructive Knowledge.

All regulations regarding the taking, possessing or transportation of small game, big game and fur bearing animals adopted in this statute are subject to amendment on an annual basis by the Commissioner of Natural Resources and all persons accepting Band, non-Band or non-Indian licenses shall be deemed to know of any such modifications, whether or not the licensee has actual knowledge.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.05.

§ 2207. License Required.

Possession of a valid Band hunting license or non-Band hunting license shall be required for the taking, possession or transportation of all big game, small game and fur bearing animals.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.06.

§ 2208. Rare and Endangered Species.

There shall be no taking, possession or transportation whatsoever of bald eagle, elk, golden eagle, timber wolf or any species determined by the Commissioner of Natural Resources to be rare or endangered.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.07.

Cross References

Endangered and threatened species, *see* Nat. Res. Comm. Order 37-86.

§ 2209. Small Game Season.

The small game season shall be September 1 to and including March 1. There shall be no limitation as to the season, number or manner of taking of rabbit or squirrel.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.08.

§ 2210. Specified Small Game Bag and Possession Limits.

The taking of ruffed grouse, sharp-tailed grouse and spruce hen shall be limited to six (6) per day per person, and the possession and transportation of these types of small game shall be limited to twelve (12) at any given time.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 7.09.

§ 2211. Big Game Bag Limits.

The taking of deer and bear shall be limited to one (1) each per season, provided that a special license may be issued permitting the taking of one (1) additional deer upon a showing that a greater need for sustenance exists.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 8.

§ 2212. Season for Does.

The season for does shall be within the period of September 1 to January 31, inclusive.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 8.01.

§ 2213. Season for Bucks.

The season for bucks shall be July 1 to January 31, inclusive.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 8.02.

§ 2214. Deer Tags.

Each licensee will be furnished with a locking seal which shall be affixed to the deer between the tendon and bone and around the bone of the leg so that such seal cannot be removed without breaking the lock.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 8.03.

§ 2215. Elk and Moose.

The taking of elk and moose shall not be permitted; however, the Commissioner of Natural Resources may authorize a moose or elk season.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 8.04.

§ 2216. Season for Furbearers.

The season for the trapping and taking of fur bearing animals shall be October 1 to and including April 30, except the taking of fox, wolves, marten and fisher, which seasons shall be determined annually by the Commissioner of Natural Resources.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 8.05.

§ 2217. Furbearer Tags.

All fur bearing animals taken pursuant to these regulations and all traps used pursuant to these regulations shall bear the number of the licensee's Band or non-Band hunting license.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 8.06.

§ 2218. Shipment of Furs.

When shipping furs taken under a Band or non-Band hunting license, the parcel must be plainly marked on the outside stating the name, address and license number of the shipper and kind and number of skins contained in the package. The waybill or receipt issued by any common carrier to a shipper shall specify the number and species of furs so shipped.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 8.07.

§ 2219. Personal Use of Hides or Pelts.

Hides or pelts adapted to personal use need not carry the license number of the taker once the adaption is completed.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 8.08.

§ 2220. Commercial Hunting and Trapping.

There shall be no commercial taking of big game, small game or fur bearing animals with the following exceptions, for which no special commercial license is needed other than the Band or non-Band hunting license:

- (a) **Taking.** The skins of all fur bearing animals may be taken commercially according to the regulations of 11 MLBS §§ 2216 to 2219.
- (b) **Deer.** The hides of deer may be possessed and transported for commercial purposes and when transported or shipped the taker must comply with the regulations set forth in 11 MLBS § 2218 if otherwise lawfully taken.
- (c) **Beaver, muskrat, rabbit, raccoon.** Beaver, muskrat, rabbit and raccoon may be taken for commercial purposes, and when the flesh of these animals is transported or shipped, the taker must comply with the regulations set forth in 11 MLBS § 2209.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50. § 9.

§ 2221. Motor Vehicles.

There shall be no taking of any animal from moving motor vehicles, including snowmobiles.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50. § 10(a).

§ 2222. Night Hunting; Shining.

- (a) It shall be illegal for any person under the jurisdiction of the Band to hunt, possess or transport any big or small game, with the exception of raccoon, that is taken at night and with or without the aid of artificial light for the purpose of hunting without just cause. Artificial light shall mean all types of light which is not generated by nature. The hunting technique commonly known as poaching with an artificial light shall be illegal for purposes of this section.

- (b) There shall be no taking of big game or small game, except raccoon, with the use of artificial lights.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, §§ 10(b), 10.03.

§ 2223. Populated Areas.

There shall be no hunting within 500 feet of any public campground during the season within which it is open for public use, or within 500 feet of any occupied dwelling.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 10(c).

§ 2224. Firing Down or Across Roads.

There shall be no firing down or across any public road.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 10(d.)

§ 2225. Permit Required.

It shall be illegal for any person under the jurisdiction of the Band to participate in any hunting activity on trust property under the jurisdiction of the Band without a valid hunting permit. It shall be a civil offense for any person, of any age, to participate in any hunting activity without a valid permit.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 10.01.

§ 2226. Minors.

It shall be illegal for any adult under the jurisdiction of the Band, over the chronological age of eighteen (18) to engage any person of a lesser chronological age in any hunting activity when said minor does not personally possess a valid hunting permit.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 10.02.

§ 2227. Possession of Untagged Big Game.

It shall be illegal for any person to possess any big game which is not tagged with the official hunting tag of the Band, any other federally recognized Band or Tribe on any trust property under the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 10.04.

§ 2228. Hunting and Trapping Seasons.

The Commissioner of Natural Resources, may shorten or lengthen the seasons provided by these regulations, may impose restrictions where none are set forth, or may close and prohibit trapping or hunting of specified species of small game, big game, or fur bearing animals, when he determines that such acts are in the best interests of the resource. The Commissioner of Natural Resources may also impose such other restrictions on manner of taking and bag limits as he deems necessary for preservation of the resource.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 12.

PART B

MIGRATORY BIRDS

Section

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- 2281. **Exportation Prohibited If Unlawfully Taken.**
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Cross References

Memorandum of understanding with US Fish and Wildlife Service on taking of migratory birds *see* Nat. Res. Comm. Orders 132-90, 152-92, 173-93.
 Off-reservation migratory bird hunting, memorandum agreement with US Fish and Wildlife Service, *see* Nat. Res. Comm. Order 144-90.

§ 2261. Taking, Possession, Transport and Export.

Migratory birds may be taken, possessed, transported, and exported only as provided by this chapter and Commissioner's Orders issued hereunto. Migratory birds has the meaning given to it at 11 MLBS § 2001(m).

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.

§ 2262. Methods.

Migratory birds on which open seasons are prescribed may be taken by any method except those prohibited in this section. No person shall take migratory game birds:

- (a) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance.

- (b) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.
- (c) From or by any means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance.
- (d) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and/or the sails furled, and its progress therefrom has ceased. Provided that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power.
- (e) By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this subsection for any person to take migratory waterfowl on an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of 10 consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.
- (f) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds.
- (g) By the aid of baiting or on or over any baited area. As used in this subsection, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited areas" means any area where shelled, shucked, or unshucked, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this subsection shall prohibit:
 - (1) The taking of all migratory birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as a result of normal agricultural planting or harvesting; and
 - (2) The taking of all migratory birds, except waterfowl, on or over land where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed

on the land where grown for wildlife management purposes, provided that manipulation for wildlife purposes does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown.

- (h) As limited to the taking of ducks, geese, swans, and coots, (*Fulica americana*), while possessing shotshells loaded with shot other than steel shot or such shot approved as nontoxic by the Commissioner of Natural Resources, in any area declared a non-toxic shot zone by the Commissioner of Natural Resources.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.01.

Cross References

Steel shot required, *see* Nat. Res. Comm. Order 31-85.

§ 2263. Closed Season.

No person shall take migratory birds during the closed season.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.02.

§ 2264. Shooting Hours.

No person shall take migratory game birds except during the hours open to shooting as prescribed by annual regulations promulgated by the Commissioner of Natural Resources pursuant to 11 MLBS § 2285.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.03.

§ 2265. Daily Limit.

No person shall take in any one (1) calendar day, more than the daily bag limit or negotiate annually aggregate daily bag limit, whichever applies.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.04.

§ 2266. Wanton Waste of Migratory Game Birds.

No person shall kill or cripple any migratory game bird pursuant to this part without making a reasonable effort to retrieve the bird and retain it in his actual custody at the place where taken or between that place and either:

- (a) his automobile or principal means of land transportation;
- (b) his personal abode or temporary or transient place of lodging;
- (c) a migratory bird preservation facility as defined by 11 MLBS § 2284;
- (d) a post office; or
- (e) a common carrier facility.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.05.

§ 2267. Possession Prohibited If Unlawfully Taken.

No person shall at any time, by any means, or in any manner possessor have in custody any migratory game bird or part thereof taken in violation of any provision of 11 MLBS §§ 2262 to 2266 or in violation of any Commissioner's Order issued under 11 MLBS § 2285.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.06.

§ 2268. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.061.

§ 2269. Possession Limit.

No person shall possess more migratory game birds taken in the United States than the possession limit or the aggregate possession limit, whichever applies.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.062.

§ 2270. Opening Day of Season

No person on the opening day of the season shall possess any freshly killed migratory game birds in excess of the daily bag limit or aggregate bag limit, whichever applies.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.063.

§ 2271. Field Possession Limit.

No person shall possess, have in custody, or transport more than the daily bag limit or aggregate daily bag limit, whichever applies, of migratory game birds, tagged or not tagged, at or between the place where taken and either:

- (a) his automobile or principal means of transportation;
- (b) his personal abode or temporary or transient place of lodging;
- (c) a migratory bird preservation facility as defined by 11 MLBS § 2284;
- (d) a post office; or
- (e) a common carrier facility.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.064.

§ 2272. Tagging Requirement.

No person shall put or leave any migratory game birds at any place (other than at his personal abode), or in the custody of another person for picking, cleaning, processing, shipping,

transportation, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such birds have a tag attached signed by the hunter stating his address, the total number and species of birds, and the date such birds were killed. Migratory game birds being transported in any vehicle as the personal baggage of the processor shall not be considered as being in storage or temporary storage.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.065.

§ 2273. Custody of Birds of Another.

No person shall receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by 11 MLBS § 2272.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.066.

§ 2274. Possession of Live Birds.

Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become a part of the daily bag limit. No person shall at any time or by any means possess or transport live migratory game birds taken under authority of this Part, except as provided by 11 MLBS § 2006.

Historical and Statutory Notes

Source: Band Statute 1162-MLC-50, § 11.067.

§ 2275. Termination of Possession.

Subject to all other requirements of this Part, the possession of birds taken by any hunter shall be deemed to have ceased when such birds have been delivered by him to another person as a gift; or have been delivered by him to a post office, a common carrier, or a migratory bird preservation facility as defined by 11 MLBS § 2284 and consigned for transport by the Postal Service or a common carrier to some person other than the hunter.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.068.

§ 2276. Gift of Migratory Game Birds.

No person may receive, possess, or give to another any freshly killed migratory game birds as a gift, except at the personal abode of the donor or donee, unless such birds have a tag attached signed by the hunter who took the birds stating such hunter's address, the total number and species of birds, and the date such birds were taken.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.07.

§ 2277. Transportation Prohibited If Unlawfully Taken.

No person shall at any time, by any means, or in any manner transport any migratory game bird or part thereof taken in violation of any provision of 11 MLBS §§ 2262 to 2266, or in violation of any Commissioner's Order issued under 11 MLBS § 2285.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.071.

§ 2278. Transportation of Birds of Another.

No person shall transport migratory game birds belonging to another person unless such birds are tagged as required by 11 MLBS § 2272.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.072.

§ 2279. Species Identification Requirement-Transportation.

No person shall transport within the United States any migratory game birds, except doves and band-tailed pigeons (*Columba fasciata*), unless the head or one fully feathered wing remains attached to each such bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50 § 11.073.

§ 2280. Marking Package or Container-Transportation.

No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee, and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.074.

§ 2281. Exportation Prohibited If Unlawfully Taken.

No person shall at any time, by any means, or in any manner export or cause to be exported any migratory game bird or part thereof taken in violation of any provision of 11 MLBS §§ 2262 to 2266, or in violation of any Commissioner's Order issued under 11 MLBS § 2285.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.08.

§ 2282. Species Identification Requirement.

No person shall export migratory game birds unless one fully feathered wing remains attached to each such bird while being transported from the United States and/or any of its possessions to any foreign country.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.081.

§ 2283. Marking Package or Container-Exportation.

No person shall export migratory game birds via the Postal Service or common carrier unless the package or container has the name and address of the shipper and the consignee, and an accurate statement of the number of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.082.

§ 2284. Migratory Bird Preservation Facility.

"Migratory Bird Preservation Facility" means:

- (a) Any person who, at his residence or place of business and for hire or other consideration;
- (b) Any taxidermist, cold-storage facility or locker plant which for hire or other consideration; or
- (c) Any hunting club which, in the normal course of operations, receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storing, or shipping.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.09.

§ 2285. Annual Rules.

The Commissioner of Natural Resources is delegated the authority to promulgate annual rules pertaining to seasons, bag limits, possession limits, and hunting hours for the on-reservation migratory bird season and the off-reservation migratory bird season in the territories defined by 2 MLBS § 107.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 11.10.

SUBCHAPTER 4

WILD RICE

Section

- 2301. Band License.**
- 2302. Non-Band License.**
- 2303. Non-Indian License.**
- 2304. License Required.**
- 2305. License Fees.**
- 2306. Regulations.**
- 2307. Determination and Posting of Season.**
- 2308. Watercraft and Flails.**
- 2309. Poles.**

2310. Paddy Rice.

2311. Constructive Knowledge.

Cross References

Explosives, use to remove obstructions to water flow on wild rice beds, *see* Nat. Res. Comm. Order 56-87.

§ 2301. Band License.

Every enrollee of the Mille Lacs Band of Chippewa Indians who harvests wild rice within the Mille Lacs Reservation shall have in his or her possession a proper Band ricing license. This license must be in his or her possession whenever harvesting, possessing or transporting wild rice within the Reservation and whenever possessing or transporting wild rice anywhere within the United States, when such wild rice was lawfully harvested within the Reservation.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, §14.

§ 2302. Non-Band License.

If the Commissioner of Natural Resources determines that it is in the best interests of the Mille Lacs Band of Chippewa Indians, he may issue a non-Band ricing license to any enrolled member of a federally recognized Tribe who is not enrolled with the Mille Lacs Reservation.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.01.

§ 2303. Non-Indian License.

If the Commissioner of Natural Resources determines that it is in the best interests of the Mille Lacs Band of Chippewa Indians, he may issue non-Indian ricing license in numbers determined by him to be suitable. The Commissioner may also, by Commissioner's Order, establish resident or nonresident classes of non-Indian licenses. Any license issued under this section must be in the possession of the person to whom issued when gathering wild rice on the Mille Lacs Reservation.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.02.

§ 2304. License Required.

Every Indian who gathers wild rice within the Mille Lacs Reservation must have in his possession a proper ricing license.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.03.

§ 2305. License Fees.

Fees may be charged in the discretion of the Commissioner of Natural Resources for the issuance of ricing licenses. The Commissioner of Natural Resources may in his discretion charge a greater fee for a non-Band ricing license than for a Band ricing license. The Commissioner may also charge a greater fee for a non-Indian ricing license than for a Band license and may charge different fees and establish different conditions and different numbers of resident and nonresident classes of non-Indian licenses.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.04.

§ 2306. Regulations.

All regulations regarding the gathering of wild rice shall be as adopted in this chapter, subject to amendment on an annual basis by the Commissioner of Natural Resources, and subject to the power of the Commissioner of Natural Resources, or his agents, to regulate opening and closing of particular beds.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.05.

§ 2307. Determination and Posting of Season.

The Commissioner of Natural Resources shall determine each year, and shall post notices announcing, the season for the harvest of wild rice that year and the length of time per day during which wild rice may be harvested.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.06.

§ 2308. Watercraft and Flails.

No watercraft may be used for the harvest of wild rice other than a boat, skiff or canoe propelled by hand, which boat, skiff or canoe may have a top width of not more than 36 inches and a length of not more than 18 feet, nor may any machine or device be used for the harvest of wild rice other than a flail not more than 30 inches in length, nor more than one (1) pound in weight, which flail must be held and operated by hand.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.07.

Cross References

Watercraft, *see* 20 MLBS § 1.

§ 2309. Poles.

No pole may be used for propelling any watercraft utilized for the gathering of wild rice unless such pole is forked at the end, with each branch less than 12 inches in length.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.08.

§ 2310. Paddy Rice.

None of the provisions of this subchapter shall apply to the gathering of paddy rice.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.09.

§ 2311. Constructive Knowledge.

All rules and regulations relating to the harvest of wild rice shall be as adopted in this chapter, subject to amendment on an annual basis by the Commissioner of Natural Resources, and all persons accepting Band, non-Band, or non-Indian licenses shall be deemed to know of any such modifications, whether or not the licensee has actual knowledge.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 14.10.

SUBCHAPTER 5

FIREWOOD HARVEST

Section

- 2401. Definitions.
- 2402. Permit Requirement.
- 2403. Prohibited Acts.
- 2404. Cutting or Maiming Wood.
- 2405. Duties of Bureau of Indian Affairs.
- 2406. Duties of Tribal Members.
- 2407. Permits for Firewood Harvest.
- 2408. Fees.
- 2409. Natural Resource Officer Powers; Confiscation.
- 2410. Failure to Comply with Directives.
- 2411. Unauthorized Removal of Wood.
- 2412. Jurisdiction.
- 2413. Penalties.

Cross References

Forestry, policy, goals and standards, *see* 11 MLBS §§ 126, 127.

§ 2401. Definitions.

The Band Assembly hereby defines the following terms as related to this chapter:

- (a) **Firewood Harvest Permit.** Shall mean a license issued by the Natural Resource Office or Clerk of Court which authorizes an enrolled member to cut trees and stumps in accordance with this chapter.
- (b) **Identified or Marked Trees.** Shall mean any and all trees marked for cutting with yellow paint.

- (c) **Live Trees.** Shall mean trees that are standing, bearing fruit or blossoms, or green leaves; whatever the tree species may be.
- (d) **Salvage Trees/Dead or Down Trees.** Shall mean any and all trees that are damaged or blown down.
- (e) **Slash/Tops.** Shall mean the branch extensions from a tree.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 22.

§ 2402. Permit Requirement.

Any enrolled member of the Minnesota Chippewa Tribe may harvest any species of tree provided he has a valid wood-cutting permit in his possession which designates the type of wood product to be cut and the legal cord amount authorized.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 16.

§ 2403. Prohibited Acts.

No enrolled member of the Minnesota Chippewa Tribe shall:

- (a) cut any unmarked species of wood product for firewood,
- (b) leave any stump that exceeds twelve inches in height from ground-base to top level of stump, unless provided for by permit,
- (c) leave tops which lie greater than four feet from the ground,
- (d) cut any species of wood for firewood purposes that is outside of the exterior boundaries of the permit's applicability,
- (e) leave any marked tree uncut and unfelled completely to the ground, or (f) be wasteful or misuse any species of wood or stumpage.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 16.01.

§ 2404. Cutting or Maiming Wood.

No enrolled member of the Minnesota Chippewa Tribe shall cut, maim or do anything which hinders the normal natural development of any species of wood while engaged in firewood harvest activity on tribal or Band trust property.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 16.02.

§ 2405. Duties of Bureau of Indian Affairs.

- (a) It shall be the jurisdiction of the Natural Resources section of the Minnesota Agency in consultation with the Band to designate any trust properties as eligible for harvestation. The Minnesota Agency shall be additionally responsible for identifying all species of trees for harvestation.
- (b) The Minnesota Agency of the Bureau of Indian Affairs shall recommend to the Band the amount of fees which may be charged by the Band for each cord of wood depending upon the species which is to be harvested.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 17.

§ 2406. Duties of Tribal Members.

- (a) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall not harvest or deface any unmarked or unidentified trees lest he be liable for payment of three times the value of each tree harvested or defaced.
- (b) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall be responsible for keeping all roads to the harvest site open and maintained in good condition.
- (c) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall be responsible for providing his own labor, equipment (suitable cutting tools include chainsaws, axes, and other hand tools), supplies, transportation, supervision and incidentals necessary to perform the work.
- (d) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall agree to indemnify and save and hold the Band harmless from any and

all claims or causes of action relating to personal injury, death or damage to property arising from performance of the terms of the permit.

- (e) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall possess salvage rights during the term of his permit on those lots he is permitted to harvest. All salvage felled trees shall be removed before each permit expires.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 18.

§ 2407. Permits for Firewood Harvest.

- (a) Any Natural Resource Officer or the Clerk of Court shall be authorized to issue to any enrolled member of the Minnesota Chippewa Tribe a permit to harvest firewood in accordance with the provisions of Band law.
- (b) Each permit issued shall expire thirty days from the date of issuance. Each tribal member shall be eligible to renew an expired permit for an additional fifteen days provided weather conditions hampered his attempts to harvest firewood.
- (c) All permits shall expire on the required delivery date stated upon any contractual agreement between the Band and the Bureau of Indian Affairs.
- (d) Each wood cutting permit issued to a member of the Minnesota Chippewa Tribe shall state what species of tree is authorized for cutting, whether live and/or dead trees are authorized for cutting, and the area of land where cutting shall be authorized.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 19.

§ 2408. Fees.

The Band Assembly hereby establishes the personal use fee for a firewood harvest permit as five dollars (\$5.00). A vendor permit fee of twenty-five dollars (\$25.00) shall be charged for firewood harvest. Additionally, a fee of five dollars (\$5.00) is hereby established for each cord of wood harvested under a vendor's permit.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 23.

§ 2409. Natural Resource Officer Powers; Confiscation.

The Natural Resource Officer of the Band shall be authorized to monitor for compliance all provisions of this subchapter. He shall be empowered to issue citations for violations of this subchapter and confiscate property of any enrolled member for failure to comply with any legal desist order of the Natural Resource Officer for violations of law. Any confiscated property shall be held by the Band until the Court of Central Jurisdiction has issued a legal decision on the matter.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 20.

§ 2410. Failure to Comply with Directives.

Any enrolled member who is issued a permit to harvest firewood who fails to comply with a legal directive of the Natural Resource Officer shall after legal hearing before the Court of Central Jurisdiction have his permit revoked and/or be levied a fine not to exceed five hundred dollars (\$500.00) and/or be banished from harvesting firewood for a period not to exceed two normal harvesting seasons.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 20.01.

§ 2411. Unauthorized Removal of Wood.

Any person who removes any species of wood without a valid permit shall be liable for a fine of three times the value of the wood. Said wood is hereby established as eighty dollars (\$80.00) per cord.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 24.

§ 2412. Jurisdiction.

The Court of Central Jurisdiction shall have jurisdiction over all legal matters involved with this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 21.

Cross References

Natural Resource Protection Code, jurisdiction, *see* 11 MLBS § 2601.

Subject-matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 2413. Penalties.

The Court of Central Jurisdiction shall be authorized to issue any or all of the following punitive measures for violation(s) of provisions of this subchapter: probation, revocation of permit, fines not to exceed five hundred dollars (\$500.00), banishment from harvestation with any eligible trust property, and confiscation of woodcutting equipment to include chainsaws, axes and other hand tools and cutting supplies.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 21.01.

SUBCHAPTER 6

FIRES

Section

2501. Starting Fires.

2502. Exemptions.

2503. Camp Fires.

2504. Permission to Start Fires.

2505. Failure to Perform Duty.

2506. Duty to Report Unauthorized Fire.

Cross References

Open fire and backfire regulations, *see* Nat. Res. Comm. Order 12-84.

§ 2501. Starting Fires.

Except as provided in 11 MLBS § 2502, any person who shall, when the ground is not snow-covered, in any place where there are standing or growing native coniferous trees, or in areas of ground from which natural coniferous trees have been cut, or where there are slashings of such

trees, or native brush, timber, slashing thereof, or excavated stumps, or where there is peat or peat roots excavated or growing, start or have any open fire without the written permission of the Commissioner of Natural Resources shall be subject to a forfeiture of \$20.00.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 25.

§ 2502. Exemptions.

No permit is required for the following open fires:

- (a) A cooking, singeing, poaching, boiling sap, or warming fire contained in a fireplace, fire-ring, charcoal grill, portable gas or liquid fueled camp stove or other similar container or device designed for the purpose of cooking or heating, or if the area within a radius of five feet of the fire is reasonably clear of all combustible material.
- (b) The burning of grass, leaves, rubbish, garbage, branches, and similar combustible material in an approved incinerator. An approved incinerator shall be constructed of fire-resistant material, have a capacity of at least three bushels, be maintained with minimum burning capacity of at least two bushels, and have a cover which is closed when in use and openings in the top or sides of one-inch maximum diameter. No combustible material shall be nearer than three feet to the burner or incinerator when in use.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 25.01.

§ 2503. Camp Fires.

Every person who when the ground is not covered with snow starts a fire in the vicinity of forest or prairie land shall exercise every reasonable precaution to prevent the fire from spreading and shall before lighting the same clear the ground of all branches, brushwood, dry leaves, and other combustible material within a radius of five feet from the fire, and keep the fire under immediate personal supervision and control at all times, and carefully extinguish the fire before quitting the place. Any person who fails to comply with any provision of this section shall be subject to a forfeiture not to exceed \$20.00.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 25.02.

§ 2504. Permission to Start Fires.

Permission to set fire to any grass, stubble, peat, brush, raking of leaves, rubbish, garbage, branches, slashing or woods for the purpose of cleanup, clearing and improving land or preventing other fires shall be given whenever the same may be safely burned upon such reasonable conditions and restrictions as the Commissioner of Natural Resources may prescribe to prevent same from spreading and getting beyond control. This permission shall be in the form of a written permit signed by the Commissioner or his designee, these permits to be on forms furnished by the Commissioner. Any person setting any fire or burning anything under such permit shall keep the permit in immediate possession while so engaged and produce and exhibit the permit to any conservation or law enforcement officer when requested to do so.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 25.03.

§ 2505. Failure to Perform Duty.

Every person who shall kindle a fire on or near forest, brush, or prairie land and leave it unquenched, or be a party thereto, or who shall set fire to brush, stumps, dry grass, field stubble, leaves, peat, rubbish, garbage, branches and slashings, or other material, and fail to extinguish the same before it has endangered the property of another; every person who shall negligently or carelessly set on fire, or cause to be set on fire, any woods, prairie, or other combustible material, whether on his own land or not, by means whereof the property of another shall be endangered, or who shall negligently suffer any fire upon his own lands to extend beyond the limits thereof; every person who shall use other than incombustible wads for firearms, or carry a naked torch, firebrand, or exposed light in or near forest land, or who, upon any such land or in the vicinity thereof, or on or along any public, tribal, or private road, trail path, railroad right of way or roadbed, or other public, tribal or private way of any kind running over, along or in the vicinity of any such land, shall throw or drop any burning match, ashes of pipe, lighted cigar, or cigarette, or any other burning substance, and who fails to extinguish the same immediately; every person who drives upon or over forest lands in a motor vehicle with an open cutout or without a muffler on the exhaust pipe; and every person who operates a tractor, chainsaw, steam or internal combustion engine in forested areas not equipped to prevent fires, shall be subject to a forfeiture not to exceed \$5,000.00.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 25.04.

§ 2506. Duty to Report Unauthorized Fire.

The occupant of any premises upon which any unauthorized fire is burning in the vicinity of forest lands, whether the fire was started by the occupant or otherwise, shall promptly report the fire to the Commissioner of Natural Resources, or to the nearest tribal or state forest officer, fire warden, conservation officer or law enforcement officer. Failure to make this report shall be deemed a violation of 11 MLBS § 2505, and the occupant of the premises shall be deemed prima facie guilty of negligence if the unreported fire spreads from the premises to the damage, loss, or injury of the tribe or any person.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 25.01(c).

SUBCHAPTER 7

ENFORCEMENT

Section

- 2601. Jurisdiction.**
- 2602. Citation.**
- 2603. Service of Process and Arrest.**
- 2604. Notice to Appear.**
- 2605. Power of Natural Resource Officers.**
- 2606. Searches.**
- 2607. Inspection of Premises.**
- 2608. Seizure.**
- 2609. Resisting or Obstructing Natural Resource Officer.**
- 2610. Witnesses to Violation.**
- 2611. Anonymity of Persons Reporting Violations.**
- 2612. Penalties.**
- 2613. Trespass.**
- 2614. Implied Consent to Seizure and Confiscation.**
- 2615. Use of Motor Vehicles and Other Equipment to Commit Violations Prohibited.**
- 2616. Possession of Animals or Wild Rice Taken in Violation of This Chapter.**
- 2617. Adoption of 18 U.S.C. Sections 1160, 1164, and 1165.**
- 2618. Property Damaged in Committing Offense.**
- 2619. Destroying Boundary and Warning Signs.**
- 2620. Hunting, Trapping or Fishing on Indian Lands.**
- 2621. Institution of Civil Forfeiture Proceedings.**
- 2622. Forfeitures.**

Cross References

Juvenile delinquency, violations heard in Criminal Division, *see* 24 MLBS § 4305.
Motor vehicles, police powers, *see* 19 MLBS § 501.
Warrant, summons and arrest, *see* 24 MLBS § 4101.

§ 2601. Jurisdiction.

The Court of Central Jurisdiction shall have jurisdiction of all matters arising under this chapter.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.

Cross References

Firewood harvest, jurisdiction, *see* 11 MLBS § 2412.
Subject-matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 2602. Citation.

Any officially recognized and sworn Natural Resource Officer of the Mille Lacs Band of Chippewa Indians shall issue a citation to each and every individual person, regardless of chronological age, who is observed in activities which are in civil violation or suspected civil violation of any section of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.02.

§ 2603. Service of Process and Arrest.

Any duly sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Chippewa Indians is hereby authorized and empowered to execute and serve all warrants and processes issued by any justice of the Court of Central Jurisdiction under any law of the Non-Removable Mille Lacs Band of Chippewa Indians. Any Natural Resource Officer may arrest without a warrant any person under the jurisdiction of the Band detected in the actual violation of any provisions of Band law, and to take such person before the Court of Central Jurisdiction and make a proper complaint.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.03.

§ 2604. Notice to Appear.

When a person is arrested for any violation of law which is punishable as a civil misdemeanor and is not taken into custody and immediately taken before the Court, the arresting officer shall prepare, in quadruplicate, written notice to appear before the Court. This notice has the effect of, and serves as, a summons and complaint. Said notice shall conform with applicable provisions of the United States Code of Federal Regulations, United States Department of Interior, Title 25-Indians. In order to secure release, without being taken into custody and immediately taken before the Court, the arrested person must give his written promise so to appear before the Court by signing, in quadruplicate, a written notice prepared by the arresting officer. The officer shall retain the original of the notice and deliver the copy thereof marked "summons to the person arrested. Thereupon the officer shall release the person from custody. If the person so summoned fails to appear on the return day, the Court shall issue a warrant for his arrest, and upon his arrest proceedings shall be had as in any other case.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.04.

§ 2605. Power of Natural Resource Officers.

Any duly sworn Natural Resource Officer is hereby authorized and empowered to enter upon any trust land within the jurisdiction of the Band for the purpose of carrying out the duties and functions of his office, or to make investigations of any violation of the Band's game and fish laws, and in aid thereof to take affidavits upon oath administered by him, and to cause proceedings to be instituted if proofs at hand warrant it.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.05.

§ 2606. Searches.

Any sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Chippewa Indians is hereby authorized and empowered to enter and inspect any commercial building located on trust property of the Band for the purpose of determining whether wild animals are kept or stored therein in violation of this chapter. He shall have power to inspect and examine the books and records of all persons, or businesses, or corporations which he has reason to believe has violated the laws relating to game or fish. He shall have power to enter and examine all camps, vessels, boats, wagons, automobiles, airplanes, or other vehicles, cars, stages, tents, suitcases, valises, packages, crates, boxes, and other receptacles and places where he has reason to believe wild animals unlawfully taken or possessed are to be found.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.06.

Cross References

Unreasonable search and seizure, *see* 1 MLBS § 2.

§ 2607. Inspection of Premises.

Any duly sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Chippewa Indians is hereby authorized and empowered to enter and inspect at all reasonable times the premises whereon is being conducted any business or activity requiring a license under this chapter.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.07.

Cross References

Unreasonable search or seizure, *see* 1 MLBS § 2.

§ 2608. Seizure.

Any duly sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Chippewa Indians is hereby authorized and empowered to seize and confiscate in the name of the Band, any wild animals or wild rice taken, bought, sold, transported, or possessed in violation of this conservation code and to seize and confiscate in the name of the Band any and all equipment used by any person in the unlawful taking or transporting of said wild animals or wild rice and any evidence of any violation of any provision of this Chapter or of Commissioner's Order issued thereunder. Anything seized or confiscated shall be held by the Band until proper determination of the case by the Court of Central Jurisdiction is finalized.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, §§ 4.08, 30.

Cross References

Unreasonable search or seizure, *see* 1 MLBS § 2.

§ 2609. Resisting or Obstructing Natural Resource Officer.

It shall be illegal for any person under the jurisdiction of the Band to willfully hinder, resist, or obstruct a duly sworn Natural Resource Officer in the performance of his official duty, or refuse to submit anything called for by him for his inspection.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50 § 4.09.

§ 2610. Witnesses to Violation.

Any person who is aware of or witnesses a violation of this chapter, or of any rule established by the Commissioner of Natural Resources regarding season limit, bag limit or restriction on method or manner of taking game, fish or wild rice, may report such infraction to the Commissioner of Natural Resources, the Natural Resource Officer or the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.10.

§ 2611. Anonymity of Persons Reporting Violations.

Any person under the jurisdiction of the Band who reports a violation of this chapter may do so anonymously. No person who reports a violation in person shall be compelled to appear in the Court of Central Jurisdiction as a witness. No justice of the Court of Central Jurisdiction shall compel any officer of the Band to reveal the name of said person as a matter of court record.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.11.

§ 2612. Penalties.

Any person who violates any provision of 11 MLBS §§ 2101 to 2310 shall be subject to a forfeiture not to exceed \$5,000.00, and a revocation of any license or permit held under this chapter.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.01.

§ 2613. Trespass.

Any person who is not eligible for a Band fishing, hunting, or ricing license, and who enters upon the trust properties of the Mille Lacs Band, of its enrolled members, or of the Minnesota Chippewa Tribe delegated to the Mille Lacs Band of Chippewa Indians, for the purpose of fishing, hunting, or gathering wild rice, shall be deemed in trespass and subject to a forfeiture not to exceed \$1,000.00. It shall be a defense to any action brought under this section that the person charged with its violation had at the time and in his possession a license validly issued under this chapter, authorizing the activity in which he was engaged.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 4.50.

§ 2614. Implied Consent to Seizure and Confiscation.

Any person not eligible for a Band fishing, hunting, or ricing license, and who enters upon the trust properties of the Mille Lacs Band, its enrolled members, or the Minnesota Chippewa Tribe delegated to the Mille Lacs Band of Chippewa Indians, for the purposes of fishing, hunting, or gathering wild rice, thereby impliedly gives consent to the seizure and forfeiture of any property used in the in the commission of any violation of this chapter or of any Commissioner's Order issued thereunder and of any wild animals or wild rice taken or possessed in violation of this chapter or any Commissioner's Order issued thereunder, and such property, wild animals, or wild rice may be seized as provided in 11 MLBS § 2608. Such consent may be withdrawn but only after any property, wild animals or wild rice subject to seizure and forfeiture has been inventoried by a Natural Resource officer of the Band.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 26.

§ 2615. Use of Motor Vehicles and Other Equipment to Commit Violations Prohibited.

- (a) The use of any vehicle, as defined by 19 MLBS § 2; any firearm, as defined by 11 MLBS § 2001; any boat, including motor, oars, paddles, and sails; any bow; arrow; spear; net; fishing rod; fishing tackle; trap; or snare to violate or to facilitate the violation of any provision of this chapter or any Commissioner's Order issued thereunder is a violation subject to a forfeiture of \$300.00.

- (b) An element of the Band's proof upon the trial of any violation of this section shall be the production of the equipment allegedly used in the violation.
- (c) Any evidence seized pursuant to section may be released to the defendant prior to trial upon a showing of hardship to the defendant's posting of bond or other security will be forfeited upon failure of the defendant to appear or to produce the evidence.
- (d) Any bond or security posted by the defendant pursuant to subsection (c) of this section shall be returned to defendant after trial if defendant has produced the evidence, provided that the bond or security may be used to set off any other obligations then owing the Band by the defendant.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 27.

§ 2616. Possession of Animals or Wild Rice Taken in Violation of This Chapter.

- (a) The possession of any animal or part thereof or wild rice taken in violation of any provision of this chapter or of any Commissioner's Order issued thereunder is a violation subject to a forfeiture of \$300.00.
- (b) An element of the Band's proof upon the trial of any violation of this section shall be the production of the animal or part thereof or wild rice allegedly taken in violation.
- (c) Any evidence seized pursuant to 11 MLBS § 2608 which is not held for forfeiture shall be released to the defendant upon dismissal of a complaint or citation under this section or a finding of no violation, except that any evidence seized may be used to set off any other obligations then owing the Band by the defendant.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 28.

§ 2617. Adoption of 18 U.S.C. Sections 1160, 1164, and 1165.

The provisions of 18 U.S.C. Sections 1160, 1164, and 1165 are adopted as Band Law. The rights expressly or impliedly granted therein are made enforceable in tribal court. Any duly sworn Natural Resource Officer of the Band may exercise enforcement powers, including the right to seize, in all cases of violation of such provisions. The appropriate Band legal officer shall subsequent to the citation of any person or the seizure of any item determine whether to refer the matter to federal authorities for prosecution, to commence proceedings under Band law, to do both or to decline all further proceedings.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 29.

§ 2618. Property Damaged in Committing Offense.

Whenever a white person, in the commission of an offense within the Indian country takes, injures or destroys the property of any friendly Indian the judgment shall include a provision that the defendant pay to the Indian owner a sum to twice the just value of the property so taken, injured, or destroyed.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 29.01.

§ 2619. Destroying Boundary and Warning Signs.

Whoever willfully destroys, defaces, or removes any sign erected by a Mille Lacs Band, or a Government agency (a) to indicate the boundary of an Indian Reservation or of any Indian country as defined in section 1151 of title 18, United States Code or (b) to give notice that hunting, trapping, or fishing is not permitted thereon without lawful authority or permission, shall forfeit not more than \$250.00.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 29.02.

§ 2620. Hunting, Trapping or Fishing on Indian Lands.

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish shall forfeit not more than \$250 and all game, fish, and peltries in his possession shall be forfeited.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 29.03.

§ 2621. Institution of Civil Forfeiture Proceedings.

The appropriate legal officer of the Mille Lacs Band of Chippewa Indians or any duly sworn Natural Resource Officer of the band is authorized to commence proceedings on any violation of any provision of this chapter or of any Commissioner's Order for which a civil forfeiture is prescribed by the issuance of either a citation or a summons and complaint. In either case the initiating papers shall inform the defendant of the section number and substance of the violation is alleged to have occurred, the maximum forfeiture which can be imposed for the violation, and the date, time, and place where he is commanded to answer. In any case where property, animals, or wild rice has been seized, a receipt therefore shall be given the defendant if practicable.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 31.

§ 2622. Forfeitures.

In addition to any money forfeiture imposed by the Court of Central Jurisdiction for violation of any provision of this chapter or any Commissioner's Order issued thereunder, the Court may order forfeited any animal, animal part, or wild rice taken in the commission of such violation. Anything so forfeited shall be disposed of by the Court of Central Jurisdiction for the benefit of the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1162-MLC-50, § 32.

CHAPTER 4

DOMESTIC ANIMALS

Subchapter

1. Dog Ordinance

Section

3001

SUBCHAPTER 1

DOG ORDINANCE

Section

3001. Definitions.

3002. Registration, Rabies Vaccination Requirement.

- 3003. Confiscation and Disposition of Dangerous Dogs and Other Dogs.**
- 3004. Fines.**
- 3005. Abandoned Dogs.**
- 3006. Civil Causes of Action.**
- 3007. Jurisdiction.**
- 3008. Sovereign Immunity.**
- 3009. Severability.**

Historical and Statutory Notes

The Introduction and Preamble of Band Ordinance 28-03 (this Subchapter) provide:

“The prior 11 MLBS Chapter 4, Sections 3001 through 3009 is hereby repealed in its entirety and replaced by this Ordinance.”

“PREAMBLE: The Mille Lacs Band of Ojibwe Indians recognizes that there is a large population of dogs on Band Lands, which pose a risk to public safety. The Band Assembly hereby enacts a Dog Ordinance to contain the dog population and to protect public safety on Band Lands. In furtherance of this law, the Mille Lacs Band of Ojibwe Indians encourages Band Members and other persons residing on Band Lands to have their dogs either spayed or neutered at the earliest appropriate age of the animal.”

§ 3001. Definitions.

For the purpose of this Subchapter:

- (a) **“Abandoned”** means a dog which has been dumped, dropped off, or the control and care of which has been given up by any person with the intent to abandon the dog.
- (b) **“Band Lands”** means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.
- (c) **“Bodily injury”** means injury to any person that involves physical pain and suffering, scarring or disfigurement, or bone fracture.
- (d) **“Dog”** means any animal within the canine family, wild or domesticated.
 - (1) **“Dangerous Dog”** means any dog that:
 - (i) has without provocation inflicted bodily injury on any person; or
 - (ii) has without provocation killed or seriously injured a domestic animal while outside the dog owner’s property line; or
 - (iii) has been determined to be “potentially dangerous” dog as defined in this Subchapter and, after the dog’s owner is given notice that the dog

is “potentially dangerous,” bites, attacks or threatens the safety of humans or other domestic animals; or

- (iv) has a contagious or infectious disease that humans or other domestic animals may contract is exposed to that animal.
- (2) A dog may not be declared dangerous based on a threat, injury or damage sustained by a person who, at the time of such threat, injury or damage, was:
- (i) committing a willful trespass or other unlawful conduct upon the premises occupied by the owner of the dog; or
 - (ii) intentionally provoking, tormenting, abusing, or assaulting the dog; or
 - (iii) committing or attempting to commit a crime.
- (e) **“Dog Enclosure”** means any securely confined house or residence, or a securely enclosed and locked pen or structure suitable to prevent a dog from escaping so as to provide humans or other animals with protection from the dog.
- (f) **“Owner”** means any person(s) possessing, harboring, keeping, having an ownership interest in, or having custody or control of the dog.
- (g) **“Potentially Dangerous Dog”** means any dog that:
- (1) is not registered with the Mille Lacs Band Department of Public Safety; or
 - (2) is not tagged with a current Rabies tag showing vaccination against rabies; or
 - (3) when unprovoked, chases or approaches a person on any property in an aggressive manner; or
 - (4) has a known propensity or disposition, as indicated by sworn statements from at least two adults, to attack or threaten the safety of humans or domestic animals; or
 - (5) is running loose anywhere on Band Lands.
- (h) **“Provocation”** means conduct or actions that tend to arouse rage, resentment or fury in another person or animal.
- (i) **“Tribal Enforcement Officer”** means any Mille Lacs Band Department of Natural Resources warden or Tribal Police Officer, or any person designated as the Mille Lacs Band dog catcher.

Historical and Statutory Notes

Source:

Band Ordinance 28-03, § 3001.

§ 3002. Registration, Rabies Vaccination Requirement.

- (a) **Requirement.** All dogs present on Band Lands must be registered with the Mille Lacs Band Department of Public Safety within 14 days after such dog is first present on Band Lands.
- (b) **Issuance of Certificate.** The Mille Lacs Band Department of Public Safety shall issue a Certificate of Registration to the Owner and maintain a copy of such Certificate of Registration.
- (c) **Rabies Vaccination.** All dogs present on Band Lands, which are over six (6) months of age, must be vaccinated against Rabies each and every year. The Owner must show proof of vaccination to the Department of Public Safety at the time they register their dog(s) or bring such proof into the Department of Public Safety office within 14 days of registration. All dogs on Band Lands must be collared and tagged with a current Rabies Tag. Owners must show proof of rabies vaccination to the Department of Public Safety on an annual basis or be subject to fines and other penalties as provided in this Subchapter.

Historical and Statutory Notes

Source:

Band Ordinance 28-03, § 3002.

§ 3003. Confiscation and Disposition of Dangerous Dogs and Other Dogs.

- (a) A Tribal Enforcement Officer may confiscate and take to the nearest Animal Shelter any dog on Band Lands if the officer has reasonable cause to believe:
 - (1) the dog is running loose;
 - (2) the dog is not being maintained in a proper dog enclosure;
 - (3) the dog is outside a proper dog enclosure and is not under the physical restraint of a responsible and able person;
 - (4) the dog is not maintained in a proper dog enclosure, the dog is outside the owner's property line, and the officer has reasonable cause to believe that the dog will commit an aggressive act which is imminent and will be dangerous to the public;

- (5) the dog is noticeably diseased, injured or maimed; or
 - (6) the dog is chasing deer or livestock.
- (b) If, in a proceeding in the Mille Lacs Band Court of Central Jurisdiction against the registered owner of a dog confiscated under paragraph (a) of this section, it is found by a preponderance of the evidence that the dog is a dangerous dog within the meaning of this Subchapter, the Court may order the dog destroyed, order the Owner to reimburse the Band for the cost of confiscating, maintaining and destroying the dog, and may impose a fine not to exceed \$500. If, in such a proceeding, the dog is not found to be a dangerous dog, the Court may order the dog returned to the registered owner under appropriate conditions and, if it is found by a preponderance of the evidence that the confiscation was proper under this Subchapter, the Court may order the registered owner to reimburse the Band for the cost of confiscating, maintaining and returning the dog and may impose a fine not to exceed \$250.
- (c) If there is not registered owner of a dog confiscated under paragraph (a) of this section, the dog may be taken to the nearest Animal Shelter or otherwise disposed of by the Tribal Enforcement Officer.
- (d) **Posted Signs.** Any person subject to the jurisdiction of the Mille Lacs Band who keeps a potentially dangerous dog on Band Lands must post a “Beware of Dog” sign on the Dog Enclosure in which the dog is maintained and/or on the property on which the dog is maintained, which sign is clearly visible to the public.

Historical and Statutory Notes

Source:

Band Ordinance 28-03, § 3003.

§ 3004. Fines.

- (a) Any person subject to the jurisdiction of the Mille Lacs Band who fails to register a dog with the Mille Lacs Band Department of Public Safety or provide proof of rabies vaccination to the Department of Public Safety as required by this Subchapter shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, an Order shall be issued and a fine shall be imposed, as follows:
- (1) first offense, an Order to register and/or tag the dog(s) shall be issued;
 - (2) second offense, an Order to register and/or tag the dog(s) shall be issued and a fine in the amount of \$25.00 shall be imposed;
 - (3) third offense, an Order to remove the dog(s) from Band Lands shall be issued and a fine in the amount of \$50.00 shall be imposed.

- (b) Any person subject to the jurisdiction of the Mille Lacs Band who fails to post a “Beware of Dog” sign in violation of § 3003(d) of this Chapter shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, an Order shall be issued and a fine shall be imposed, as follows:
- (1) first offense, an Order to post the sign shall be issued and a fine in the amount of \$25.00 shall be imposed;
 - (2) second offense, an Order to post the sign shall be issued and a fine in the amount of \$50.00 shall be imposed;
 - (3) third offense, an Order to remove the dog(s) from Band Lands shall be issued and a fine in the amount of \$75.00 shall be imposed.
- (c) **Liability for Medical Expenses.** Any person subject to the jurisdiction of the Mille Lacs Band whose dog, while on Band Lands, bites any person without provocation and inflicts bodily injury, shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, a fine in the maximum amount of \$250.00 shall be imposed and the victim’s medical costs shall be assessed against such person. If, by a preponderance of the evidence, such person is found guilty of a second such charge involving the same dog, a fine in the maximum amount of \$500 shall be imposed, an Order to destroy the dog shall be issued, and the victim’s medical costs and the costs of destroying the dog shall be assessed against such person.

Historical and Statutory Notes

Source:

Band Ordinance 28-03, § 3004.

§ 3005. Abandoned Dogs.

- (a) It is unlawful for any person subject to the jurisdiction of the Mille Lacs Band to abandon a dog or dogs on Band Lands.
- (b) Any dog that is abandoned on Band Lands may be taken to the nearest Animal Shelter or otherwise disposed of by the Tribal Enforcement Officer.
- (c) If a Tribal Enforcement Officer views a dog wandering the roads, parking areas, or other public areas on Band Lands, without a collar and/or a visible current rabies tag, the officer may presume that the dog is abandoned.
- (d) Any person subject to the jurisdiction of the Mille Lacs Band found, by a preponderance of the evidence, to have abandoned a dog(s) on Band Lands shall be

guilty of a civil misdemeanor, shall be billed for all removal costs and/or all costs for destruction of the animal, and shall be subject to a maximum fine of \$500.

Historical and Statutory Notes

Source:

Band Ordinance 28-03, § 3005.

§ 3006. Civil Causes of Action.

Nothing in this Subchapter shall prevent an individual from pursuing a civil cause of action for injuries sustained from a dog bite or attack.

Historical and Statutory Notes

Source:

Band Ordinance 28-03, § 3006.

§ 3007. Jurisdiction.

The Mille Lacs Band Court of Central Jurisdiction shall have jurisdiction over all actions pertaining to this Subchapter.

Historical and Statutory Notes

Source:

Band Ordinance 28-03, § 3007.

§ 3008. Sovereign Immunity.

Nothing in this Subchapter shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

Historical and Statutory Notes

Source:

Band Ordinance 28-03, § 3008.

§ 3009. Severability.

If the Court of Central Jurisdiction adjudges any provision of this Subchapter to be invalid, such judgment shall not affect any other provisions of this Subchapter not specifically included in the judgment.

Historical and Statutory Notes

Source:

Band Ordinance 28-03, § 3009.

CHAPTER 5

**1837 TREATY CONSERVATION CODE FOR THE MINNESOTA CEDED
TERRITORY**

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	4001
2. General Definitions	4011
3. General Regulations	4021
4. Enforcement	4081
5. Wild Rice Harvesting Regulations	5011
6. Deer Harvesting Regulations	5041
7. Bear Harvesting Regulations	5081
8. Small Game Harvesting Regulations	5121
9. Fish Harvesting Regulations	5161
10. Migratory Bird Harvesting Regulations	5201
11. Amphibians, Turtles, Mussels, and Crayfish	5241
12. Wild Plant Harvesting Regulations	5261

Historical and Statutory Notes

Band Ordinance 07-97 (this Chapter), §§ 1.01, 1.02, 1.05, 1.07, and 1.08 provide:

“1.01 Title. This ordinance shall be known as the 1837 Treaty Conservation Code for the Minnesota Ceded Territory of the Mille Lacs Band of Ojibwe Indians.”

“1.02 Authority. This ordinance is enacted pursuant to 3 MLBS § 2(a).”

“1.05 Effective Date. Except as otherwise provided in specific sections, the provisions of this ordinance shall become effective at 12:01am on March 15, 1997.”

“1.07 Severability and Immunity. If any section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction the remainder of this ordinance shall not be affected thereby. The Band does not waive and to the contrary asserts to the fullest extent allowed by law immunity on its part and that of its officers, employees, and/or agents from any claims, actions or damages that may arise under or result from this ordinance.”

“1.08 Repeal of Inconsistent Ordinances, Resolutions and Orders. All Band ordinances, resolutions and orders inconsistent with this ordinance are hereby repealed. To the extent that this ordinance imposes great restrictions that those contained in any other ordinance, resolution or order, the provisions of this ordinance shall govern.”

SUBCHAPTER 1

GENERAL PROVISIONS

Section

4001. Purpose.

4002. Territorial Applicability.

4003. Interpretation.

4004. Religious or Ceremonial Use of Natural Resources.

4005. Additional Measures.

§ 4001. Purpose.

It is the purpose of this Chapter to provide an orderly system for Band control and regulation of the Band's hunting, fishing and gathering rights on the lands and waters located in the State of Minnesota which were ceded in the Treaty of 1837, 7 Stat. 536, ("Minnesota Ceded Territory"), which:

- (a) promotes public health and safety and the conservation and management of fish, wildlife and plant populations in the Minnesota Ceded Territory; and
- (b) is consistent with the 1837 Treaty, applicable Federal law, and the opinions, orders and decrees entered by the Court in *Mille Lacs Band v. State of Minnesota*, No. 394-1226 (D. Minn.).

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 1.03.

§ 4002. Territorial Applicability.

This Chapter shall govern all treaty hunting, fishing and gathering activities of Band members within the Minnesota Ceded Territory.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 1.04.

§ 4003. Interpretation.

The provisions of this Chapter:

- (a) Shall be interpreted and applied as minimum requirements applicable to the exercise of treaty rights subject to this Chapter;
- (b) Shall be construed liberally in favor of the Band;
- (c) Shall be construed consistently with the 1837 Treaty, applicable Federal law, and the opinions, orders and decrees entered by the Court in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.); and
- (d) Shall not be deemed a limitation or repeal of any other tribal power or authority.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 1.06.

§ 4004. Religious or Ceremonial Use of Natural Resources.

- (a) Except as provided in paragraphs (b) and (c) below and § 4046, nothing in this Chapter shall prohibit the harvest or use of any resource for religious or ceremonial purposes in accordance with the traditions and customs of the Band.
- (b) No member shall harvest any resource for religious or ceremonial purposes without written authorization from the Department of Natural Resources and a permit issued by the Commissioner pursuant to this section, and no member shall fail to comply with the terms and conditions of any such permit.
- (c) In reviewing and taking action on any request for a permit to harvest a resource for religious or ceremonial purposes, the Commissioner shall take into account the biological impact of the harvest and shall ensure compliance with all provisions of the 1837 Treaty, applicable Federal law, and the opinions, orders and decrees entered by the Court in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 1.09.

§ 4005. Additional Measures.

The Department of Natural Resources is authorized to issue orders that impose measures regulating hunting, fishing and gathering by Band members in the Minnesota Ceded Territory that are in addition to and more restrictive than the provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 1.10.

SUBCHAPTER 2

GENERAL DEFINITIONS

Section

4011. General Definitions.

§ 4011. General Definitions.

The following terms, wherever used in this Chapter, shall be construed as follows:

- (a) **"Band," "Tribe," and "Tribal"** mean or refer to the Mille Lacs Band of Ojibwe. When used in the plural, "Bands" or "Tribes" refers to all plaintiff and plaintiff intervenor Bands in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).
- (b) **"Carcass"** means the dead body of any wild animal to which it refers, and, unless clearly indicated to the contrary by a specific provision of this Chapter in particular circumstances, includes the hide or skin and head.
- (c) **"Commercial Harvesting"** shall mean any harvesting of a natural resource in which the resource harvested, or any portion thereof, is sold, but shall not include harvesting of natural resources for subsistence uses.
- (d) **"Commission"** means the Great Lakes Indian Fish and Wildlife Commission.
- (e) **"Commissioner"** means the Commissioner of Natural Resources of the Mille Lacs Band, unless the context expressly indicates otherwise.
- (f) **"Department of Natural Resources"** means the Band's conservation department, unless the context expressly indicates otherwise.

- (g) **"Endangered or Threatened Species"** means any wild animal or wild plant which is contained on either the federal (50 CFR Sections 17.11 and 17.12) or Commissioner's endangered and threatened species lists, as may be amended from time to time, or which the Band's governing body from time to time may declare as endangered or threatened. The Commissioner's list shall, at a minimum, initially contain all species listed by the State of Minnesota as threatened or endangered as of January 1, 1995, but may be revised hereafter in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).
- (h) **"Fishing"** includes taking, capturing, killing or attempting to take, capture or kill fish of any variety in any manner. When the word "fish" is used as a verb, it shall have the same meaning as the word "fishing" as defined herein.
- (i) **"Game fish"** includes all varieties of fish except rough fish and minnows; **"rough fish"** means carp, buffalo, sucker, sheepshead, bowfin, burbot, cisco, gar, goldeye and bullhead; **"minnows"** includes
- (1) the minnow family, Cyprinidae, except carp and goldfish;
 - (2) members of the mudminnow family; Umbridae;
 - (3) members of the sucker family, Catostomidae, not over 12 inches in length;
 - (4) bullheads, ciscoes, lake white fish, goldeyes, and mooneyes, not over seven inches long; and
 - (5) leeches.
- (j) **"Gathering"** means to take or acquire or attempt to take or acquire possession of any wild plant or any part thereof.
- (k) **"Hunt" or "Hunting"** includes shooting, shooting at, taking, catching, or killing any wild animal or animals, or attempting to do any of the foregoing, except that "hunt" or "hunting" does not include the recovery of any wild animal which has already been lawfully reduced to possession.
- (l) **"Member"** means a member of the Band.
- (m) **"Minnesota Ceded territory"** means all lands and waters in Minnesota that were ceded by the Chippewa to the United States of America in the Treaty of 1837, 7 Stat. 536.
- (n) **"Motor Vehicle"** means a self-propelled vehicle or a vehicle propelled or drawn by a self-propelled vehicle that is operated on a highway, on a railroad track, on the ground, in the water, or in the air.

- (o) **“Non-member”** means a person who is not a member of any one of the Bands.
- (p) **"Possession"** means having killed, harvested, or otherwise obtained or acquired any wild animal or wild plant subject to the provisions of this Chapter.
- (q) **"Protected Species"** means any wild animal or wild plant, the hunting, fishing, trapping or gathering of which is prohibited by § 4050 of this Chapter.
- (r) **"Subsistence Uses"** shall mean the use of natural resources for direct personal or family consumption by Band members as food, medicine, shelter, fuel, clothing, tools or transportation; for the making or selling of handicraft articles; or for barter. For purposes of this section, the term:
 - (1) **"family"** means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis;
 - (2) **"handicraft articles"** means articles produced, decorated or fashioned in the exercise of traditional Indian handicrafts such as carving, weaving, beading, drawing or painting, without the use of mass copying devices; and
 - (3) **"barter"** means the sale or exchange of natural resources or parts thereof for subsistence uses between members of the Bands.
- (s) **"Trapping"** includes the taking of, or attempting to take, any wild animal by means of setting or operating any device, mechanism or contraption that is designed, built or made to close upon, hold fast, or otherwise capture a wild animal or animals. When the word "trap" is used as a verb, it shall have the same meaning as the word "trapping" as defined herein.
- (t) **"Unprotected Species"** means any wild animal or wild plant, the hunting, fishing, trapping or gathering of which is not expressly authorized, prohibited or regulated by this Chapter.
- (u) **"Wild animal"** means any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion.
- (v) **"Wildlife"** means all varieties of wild animals.
- (w) **"Wild Plant"** means any undomesticated species, and fruit or part thereof, of the plant kingdom occurring in the natural ecosystem, and includes wild rice, maple sap, ginseng, birch bark and timber.
- (x) **"Working day"** means Monday, Tuesday, Wednesday, Thursday or Friday, unless such day is a Band holiday.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 2.01.

SUBCHAPTER 3

GENERAL REGULATIONS

Section

- 4021. Regulatory Authority.**
- 4022. Permits and Identification.**
- 4023. Waste of Natural Resources.**
- 4024. Larceny of Natural Resources.**
- 4025. Use of Poison and Explosives; Pole Traps.**
- 4026. Throwing Refuse in Waters; Abandoning Automobiles, Boats or Other.**
- 4027. Fish Stocking; Undesirable Exotic Aquatic Plants or Wild Animals.**
- 4028. Scientific Investigation.**
- 4029. Seasons.**
- 4030. Possession of Wild Plants or Wild Animals Taken During Closed Season.**
- 4031. Bag Limits; Possession Limits.**
- 4032. Sharing of Permits and Tags.**
- 4033. Harvesting with Another's Permit Prohibited.**
- 4034. Shining Animals.**
- 4035. Duties on Accidental Shooting.**
- 4036. Failure to Report Hunting Accident.**
- 4037. Hunter Education Requirements and Restrictions on Hunting by Members Under 14 Years of Age.**
- 4038. Hunting While Intoxicated.**
- 4039. Resisting Conservation Wardens.**
- 4040. False Impersonation of Warden.**
- 4041. General Restrictions on Hunting.**
- 4042. Use of Motor Vehicles to Chase Wild Animals Prohibited.**
- 4043. Hunting with Aircraft Prohibited.**
- 4044. Pivot Guns and Similar Devices Prohibited.**
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- 4046. Endangered and Threatened Species Protected.**
- 4047. Records of Commercial Transactions Required.**
- 4048. Special Use Areas.**
- 4049. Unprotected Species.**
- 4050. Protected Species.**
- 4051. Permissible Conduct/Assistance by Non-Members.**
- 4052. Emergency Closures.**
- 4053. Management Units.**
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- 4056. Removal of Signs.**
- 4057. Hunter, Trapper, and Angler Harassment Prohibited.**
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- 4059. Structures in Public Waters Prohibited.**
- 4060. Training Dogs.**
- 4061. Permits to Take Animals Causing Damage**

§ 4021. Regulatory Authority.

- (a) The Band asserts legal authority to regulate the harvesting, use and disposition of all wild plants and wild animals by its members within the Minnesota Ceded Territory under the 1837 Treaty.
- (b) An officer of one of the Bands or other law enforcement official authorized to enforce the provisions of this Chapter may seize forthwith wherever found:
 - (1) any wild plant or wild animal, or carcass or part thereof, taken or reduced to possession in violation of this Chapter; or
 - (2) any wild plant or wild animal, or carcass or part thereof, lawfully taken or reduced to possession under this Chapter, upon violation of the Chapter relating to the possession, use, giving, sale, barter or transportation of such wild plant or wild animal, or carcass or part thereof.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.01.

§ 4022. Permits and Identification.

- (a) No member shall engage in the exercise of 1837 treaty rights regulated by this Chapter without a validly issued Band natural resources harvesting permit or such other permit as this Chapter may require validated for the particular type of activity to be engaged in and for the particular season in question.
- (b) No member shall engage in the exercise of treaty rights regulated by this Chapter except while carrying a valid color picture identification card issued by the Band.
- (c) Except as otherwise provided in this Chapter, the Department of Natural Resources is authorized to issue to members permits required by this Chapter and establish the form of such permits, provided that such form shall include the member's name, address and Band enrollment number.

- (d) No member shall refuse to display his or her identification documents or any other document or permit required by this Chapter to any Band, state, local or federal law enforcement officer upon request by such officer.
- (e) No member to whom any permit has been issued under this Chapter shall fail or refuse to provide harvest reports and data, and such other relevant information, as may be lawfully requested by one of the Bands', state, local and federal law enforcement officers or the Department of Natural Resources.
- (f) Permits, carcass tags and registration tags issued or used pursuant to this Chapter in connection with any species for which a harvest quota is established shall be numbered sequentially and shall be indexed by number making information regarding the identity of the person who has been issued a tag or permit promptly accessible.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.02.

§ 4023. Waste of Natural Resources.

No member shall unreasonably waste, injure, destroy, or impair natural resources while engaging in the exercise of treaty rights regulated by this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.03.

§ 4024. Larceny of Natural Resources.

No member shall, without permission of the owner, molest, disturb or appropriate any wild plant or wild animal, or the carcass or part thereof, which has been lawfully reduced to possession by or is otherwise owned by another.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.04.

§ 4025. Use of Poison and Explosives; Pole Traps.

- (a) No member shall take, capture, or kill or attempt to take, capture or kill any wild animal with the aid of dynamite or any other explosive or poisonous or stupefying substances or devices.
- (b) No member shall place in or allow to enter any waters explosives which might cause the destruction of any wild animal, except when authorized by the Commissioner, or have in his or her possession or under his or her control upon any waters any dynamite or other explosives or poisonous or stupefying substances or devices for the purpose of taking, catching or killing wild animals.
- (c) No member shall use, set, lay or prepare in or allow to enter any waters any lime, poison, fish berries, or any other substance deleterious to fish life; or use baits containing poison of any description in any forests, fields or other places where such baits might destroy or cause the destruction of wild animals; and the possession of any such poison, poison baits or substances deleterious to wild animals by a member while exercising treaty rights regulated by this Chapters is prima facie evidence of a violation of this section.
- (d) No member shall take, capture or kill or attempt to take capture or kill any bird by setting or operating any trap or device designed, built or used to capture birds on a pole, post, tree stump or any other elevated perch more than three (3) feet above the ground.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.05.

§ 4026. Throwing Refuse in Waters; Abandoning Automobiles, Boats or Other Vehicles.

No member shall deposit, place or throw into any waters, or leave upon the ice, any cans, bottles, debris, refuse or other solid waste materials; and no member shall abandon any automobile, boat or other vehicle in any waters. Any automobile, boat or other vehicles not removed within forty-eight hours shall be rebuttably presumed to be abandoned.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.06.

§ 4027. Fish Stocking; Undesirable Exotic Aquatic Plants or Wild Animals.

- (a) Except in connection with a harvest activity authorized by this Chapter or as otherwise permitted by controlling law, a member may not import, transport or stock in any waters in the Minnesota Ceded Territory live fish eggs, fresh spawn, or immature or adult fish of any species or any mussel, turtle or crayfish without a permit issued by the Commissioner.

- (b)
 - (1) The Commissioner is authorized to establish a ceded territory program to prevent and curb the spread of harmful exotic species. This program may include a long-term plan, which may include specific plans for individual species, for ceded territory wide management of harmful exotic species. Any exotic species program or harmful exotic species management plan may be developed in conjunction with any corresponding state management plan required by state law. The Commissioner may adopt the state management plan, or relevant portions thereof, as the ceded territory program.
 - (2) For the purposes of this Chapter, the term "exotic species" means a wild animal or plant species that is not naturally present or reproducing within the ceded territory or that does not naturally expand from its historic range in the ceded territory, and the term "harmful exotic species" means an exotic species that can naturalize and either:
 - (i) causes or may cause displacement of or otherwise threaten native species in their natural communities; or
 - (ii) threaten or may threaten natural resources or their use in the ceded territory.

- (c)
 - (1) No later than May 1 of each year and at such other times during the year as may be necessary, the Commissioner shall designate any waters of the ceded territory as infested waters if the Commissioner determines that they contain a harmful exotic species that could spread to other waters if use of the water and related activities are not regulated to prevent this. The Commissioner's designation of infested waters, if any, may incorporate the parallel designations under Minnesota state law. The notice that the Commissioner provides to members of the infested waters designations may be the same notice provided for the same waters by the Minnesota Department of Natural Resources under state law. Should the Commissioner fail or choose not to make any infested waters designations required under this subsection, the infested waters designations by the Minnesota Department of Natural Resources under state law, and the accompanying public notice of those

designations, shall be deemed the Commissioner's designations for the purposes of this Chapter.

- (2) For the purposes of this Chapter, the term "infested waters" means waters and waterbodies identified by the Commissioner as having populations of select harmful exotic species such as zebra mussel (all species of the genus *Dreissena*), Eurasian milfoil (*Myriophyllum spicatum*), ruffe (*Gymnocephalus cernuus*), spiny water flea, or white perch (*Morone americana*).
 - (3) No member shall take any wild animal from infested waters for bait purposes.
 - (4) No member shall fail to:
 - (i) dry for a minimum of 10 days or freeze for a minimum of 2 days before use in non-infested waters any net or associated piece of equipment, including any trap, buoy, anchor, stake or line;
 - (ii) remove all aquatic vegetation from nets or associated equipment when they are removed from infested waters; or
 - (iii) notify the Commissioner or a Band or Commission warden when removing nets from infested waters and before re-setting those nets in non-infested waters.
 - (5) No member shall use water from infested waters to transport fish without a permit from the Commissioner.
 - (6) No member leaving infested waters identified as having populations of zebra mussels or spiny water flea shall fail to drain bait containers, other boating related equipment holding water, and live wells and bilges by removing the drain plug before transporting the watercraft and associated equipment on public roads.
 - (7) No member shall transport infested waters on a public road or off property riparian to infested waters except as otherwise authorized by Minnesota state law or under special permit issued by the Commissioner, and no member shall divert infested waters except in compliance with Minnesota state law or in accordance with a special permit issued by the Commissioner.
- (d)
- (1) No later than May 1 of each year and at such other times during the year as may be necessary, the Commissioner shall designate waters of the ceded territory as having limited infestations of Eurasian milfoil (*Myriophyllum spicatum*). The Commissioner's designation of limited infestations, if any, may incorporate the parallel designations under Minnesota state law. The

notice that the Commissioner provides to members of limited infestations designations may be the same notice provided for the same waters by the Minnesota Department of Natural Resources under state law. Should the Commissioner fail or choose not to make any limited infestation designations required under this subsection, the limited infestation designations by the Minnesota Department of Natural Resources under state law, and the accompanying public notice of those designations, shall be deemed the Commissioner's designations for the purposes of this Chapter.

- (2) The Commissioner, or his or her designee, may mark and delineate areas of infestation of Eurasian Milfoil where control is planned in water bodies identified as having limited infestations. No member shall enter an area of limited infestation of Eurasian milfoil marked or delineated by the Commissioner or by the Minnesota Department of Natural resources under state law, except:
 - (i) in emergency situations where property or human life is endangered;
 - (ii) by enforcement, emergency, resource management and other Band government personnel or their agents when performing official duties; or
 - (iii) for the purpose of access via the shortest and most direct route through a marked or delineated area by owners or lessees of land adjacent to marked or delineated areas who do not have other water access to their land.
- (e)
- (1) The following species are prohibited exotic species for the purposes of this Chapter:
 - (i) Aquatic Plants: Eurasian milfoil (*Myriophyllum spicatum*); hydrilla (*Hydrilla verticillata*); European frog-bit (*Hydorchairs morsusranae*); flowering rush (*Butomus umbellatus*); any variety, hybrid, or cultivar of purple loosestrife (*Lythrum salicaria*, *Lythrum virgatum*, or any combinations); and water chestnut (*Trapa natans*).
 - (ii) Fish: grass carp (*Ctenopharyngodon idella*); rudd (*Scardinius erythrophthalmus*); round goby (*Neogobius melanostomus*); ruffe (*Bymnocephalus cernuus*); sea lamprey (*Petromyzon marinus*); and white perch (*Morone americana*).
 - (iii) Invertebrates: rusty crayfish (*Orconectes rusticus*); and zebra mussel species (all species of the genus *Dreissena*).

- (iv) Mammals: Asian raccoon dog, also known as finnraccoon (*Nyctereutes procyonoides*); European rabbit (*Oryctolagus cuniculus*); and any strain of nutria (*Mycocastor coypu*).
 - (v) Any other species so designated by the Commissioner taking into account the likelihood of introduction of the species if it is allowed to enter or exist in the ceded territory; the likelihood that the species would naturalize in the ceded territory were it introduced; the magnitude of potential adverse impacts of the species on native species and on use of natural resources; the ability to eradicate or control the spread of the species once it is introduced in the ceded territory; and other criteria the Commissioner deems appropriate.
- (2) No member shall possess, import, purchase, sell, propagate, transport, or introduce a prohibited exotic species, except:
- (i) under a permit issued by the Commissioner for the purposes of disposal, control, research or education;
 - (ii) when being transported to the Department of Natural Resources, or another destination as the Commissioner may direct, in a sealed container for purposes of identifying the species or reporting the presence of the species;
 - (iii) when being transported for disposal as part of a harvest or control activity under a permit issued by or as specified by the Commissioner;
 - (iv) when a specimen has been lawfully acquired dead and, in the case of plant species, all seeds are removed or are otherwise secured in a sealed container;
 - (v) in the form of herbaria or other preserved specimens;
 - (vi) when being removed from watercraft and equipment, or caught while fishing, and immediately returned to the water from which they came; or
 - (vii) as the Commissioner may otherwise prescribe by order.
- (3) The Commissioner, his or her designees, or any warden authorized to enforce this Chapter, may seize or dispose of all specimens of prohibited exotic species unlawfully possessed, imported, purchased, sold, propagated, transported, or introduced into the ceded territory by members.

- (f) Except as otherwise provided in this Chapter, pursuant to a special permit issued by the Commissioner, or as otherwise permitted by controlling law, no member shall place or introduce any exotic species within the ceded territory.
- (g) No member who allows or causes the introduction of a wild animal that is an exotic species shall fail to notify the Commissioner, the Commission, or a warden authorized to enforce this Chapter within 48 hours after learning of the introduction. The member shall make every reasonable attempt to recapture or destroy the introduced animal.
- (h)
 - (1) No member shall transport aquatic macrophyte on any state forest road or any other public road except as provided in this subsection. For the purposes of this Chapter, the term "aquatic macrophyte" means a nonwoody plant, either a submerged, floating leafed, floating, or emergent plant that naturally grows in water or hydric soils.
 - (2) Unless otherwise prohibited by law, a member may transport aquatic macrophytes:
 - (i) that are duckweed in the family *Lemnaceae*;
 - (ii) for disposal as part of a harvest or control activity conducted under an aquatic plant management permit issued by the Commissioner or as otherwise specified by the Commissioner;
 - (iii) for purposes of constructing shooting or observation blinds in amounts sufficient for that purpose, provided the aquatic acrophytes are emergent and cut above the waterline;
 - (iv) when legally purchased or traded by or from commercial or hobbyist sources for aquarium or ornamental purposes;
 - (v) that are legally harvested if in a motor vehicle;
 - (vi) to the Department of Natural Resources, or another destination as the Commissioner may authorize, in a sealed container for purposes of identifying a species or reporting the presence of a species;
 - (vii) when transporting an aquatic plant harvester used in a properly authorized harvest or control activity to a suitable location for purposes of cleaning any remaining aquatic macrophytes;
 - (viii) that are legally harvested wild rice; or

- (ix) in the form of fragments of emergent aquatic macrophytes incidentally transported in or on watercraft or decoys used for waterfowl hunting during the waterfowl season.
- (i)
- (1) No member shall place or attempt to place into waters of the ceded territory a watercraft, trailer, or plant harvesting equipment that has aquatic macrophytes, zebra mussels, or prohibited exotic species attached. A warden authorized to enforce this Chapter may order:
 - (i) the removal of aquatic macrophytes or prohibited exotic species from a trailer or watercraft before it is placed into waters of the ceded territory;
 - (ii) confinement of the watercraft at a mooring, dock, or other location until the watercraft is removed from the water; and
 - (iii) removal of a watercraft from waters of the ceded territory to remove prohibited exotic species if the water has not been designated by the Commissioner as being infested with that species.
 - (2) No member shall fail to obey an order of a duly authorized warden to remove prohibited exotic species from any watercraft, trailer, or plant harvesting equipment.
- (j) For the purposes of this section, the term "watercraft" means a contrivance used or designed for navigation on water and includes seaplanes.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.06A.

§ 4028. Scientific Investigation.

- (a) The Commissioner may conduct or authorize the Commission's Biological Services Division to conduct investigations of wild animals and wild plants in order to develop scientific information relating to population, reproduction, distribution, habitat needs, and other biological data in order to advise the Band on conservation measures designed to ensure the continued ability of wild animals and wild plants to perpetuate themselves, in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.) regarding scientific investigations.
- (b) The Commissioner may for scientific purposes engage in or authorize the Commission's Biological Services Division to engage in the harvest of protected wild

animals or wild plants on such terms and conditions as the Commissioner deems appropriate.

- (c) The Commissioner may consult the State Department of Natural Resources and appropriate Federal Agencies to facilitate coordination and data comparability of scientific investigations.
- (d) The Commissioner, with the approval of a majority of the Bands, may restrict hunting, fishing and gathering by Band members in order to facilitate scientific investigations undertaken under this section or by the State Department of Natural Resources or the Federal Government.
- (e) No member shall tag or otherwise mark a live fish for identification without a permit from the Commissioner.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.07.

§ 4029. Seasons.

No member shall engage in the exercise of treaty rights regulated by this Chapter, except during the respective seasons established pursuant to this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.08.

§ 4030. Possession of Wild Plants or Wild Animals Taken During Closed Season.

No member shall have in his or her possession or under his or her control at any time any wild plant or wild animal, or the carcass or any part thereof, showing that the same has been taken during the closed season for such plant or animal.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.09.

§ 4031. Bag Limits; Possession Limits.

No member shall have in his or her possession or under his or her control any wild plant or wild animal in excess of the bag or possession limits or above or below the size limits established by this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.10.

§ 4032. Sharing of Permits and Tags.

Except as otherwise provided in this Chapter, no member shall lend, share, give, sell, barter or trade, or offer to lend, share, give, sell, barter or trade to any person any identification document, permit or tag issued pursuant to this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.12.

§ 4033. Harvesting with Another's Permit Prohibited.

Except as otherwise provided in this Chapter, no member shall hunt, fish, trap or gather any wild animal or wild plant while in possession of any permit or tag issued to another.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.13.

§ 4034. Shining Animals.

(a) **Definitions.** As used in this Chapter:

- (1) **"Flashlight"** means a battery operated light designed to be carried and held by hand.
- (2) **"Light"** includes flashlights, automobile lights and other lights.
- (3) **"Shining"** means the casting of rays of light on a field, forest, or other area for the purpose of illuminating, locating or attempting to illuminate or locate wild animals.

- (b) **Presumption.** A person casting rays of light on a field, forest or other area which is frequented by wild animals is rebuttably presumed to be shining wild animals.
- (c) **Shining Wild Animals While Hunting or Possessing Weapons Prohibited.**
- (1) **Prohibition.** Except as otherwise provided in subparagraph (2), no member shall use or possess with intent to use a light for shining wild animals while the member is hunting or in possession of a firearm, bow and arrow or crossbow.
- (2) **Exceptions.** This subparagraph shall not apply to:
- (i) a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting on foot pursuant to the express provisions of this Chapter which allow shining during the open season for the animals hunted;
 - (ii) a person authorized to enforce the provisions of this Chapter on official business;
 - (iii) an employee of the Band or the Commission on official business;
 - (iv) a person authorized by the Band or the Commission to conduct a game census; or
 - (v) a member engaged in hunting authorized by § 5059 of this Chapter.
- (d) **Shining Wild Animals After 10 P.M. During Certain Times of the Year Prohibited.**
- (1) **Prohibition.** Except as otherwise provided in subparagraph (2), no member shall use or possess with intent to use a light for shining wild animals between 10 p.m. and 7 a.m. from Labor Day through December 31.
- (2) **Exceptions.** This subsection shall not apply to:
- (i) a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting on foot pursuant to the express provisions of this Chapter which allow shining during the open season for the animals hunted;
 - (ii) a member who possesses a flashlight or who uses a flashlight while on foot and training a dog to track or hunt raccoons, foxes or unprotected animals, provided that the members may only have blank cartridges or shells in personal possession;

- (iii) a person authorized to enforce the provisions of this Chapter on official business;
- (iv) an employee of the Band or the Commission on official business;
- (v) a person authorized by the Band or the Commission to conduct a game census;
- (vi) if the Commissioner specifically permits a member to use or possess a light for shining wild animals during these times;
- (vii) a member engaged in hunting authorized by § 5059 of the Chapter; or
- (viii) a member engaged in fishing authorized by § 5166 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.14.

§ 4035. Duties on Accidental Shooting.

Any member who, while hunting any wild animal, discharges a firearm or arrow, and thereby injures or kills another person, shall forthwith give his or her name and address to such person if injured and render assistance to him or her as may be necessary and obtain immediate medical or hospital care, and shall immediately thereafter report such injury or death to the proper law enforcement authorities.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.15.

§ 4036. Failure to Report Hunting Accident.

Every member who shall have caused or been involved in an accident in which another person has been injured by gunfire or by arrow while hunting or trapping, or shall have inflicted an injury upon himself or herself with a firearm or arrow while hunting or trapping, shall render or cause to be rendered a report to the Department of Natural Resources within ten (10) days after such injury.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.16.

§ 4037. Hunter Education Requirements and Restrictions on Hunting by Members Under 14 Years of Age.

(a)

- (1) **Certificate of Accomplishment Required.** Except as provided in subparagraph (2), no member born on or after January 1, 1977 may hunt while possessing a firearm, bow and arrow or crossbow unless the member has been issued a certificate of accomplishment under a Band hunter education and firearm safety course.
- (2) **Exceptions.** A member may hunt while possessing a firearm, bow and arrow or crossbow without having been issued a certificate of accomplishment from a Band hunter education and firearm safety course when:
 - (3) the member has a certificate, license or other evidence indicating that he or she has completed a hunter safety course offered by another tribe, state or province and the course is substantially similar to the Band's hunter safety course; or
 - (4) the member has successfully completed basic training in the U.S. Armed Forces, Reserves or National Guard.

(b) **Additional Restrictions on Hunting by Members Under 14 Years of Age.**

- (1) **Persons Under 12 Years of Age.** No member under 12 years of age may hunt while possessing a firearm, bow and arrow or crossbow unless authorized by the Department of Natural Resources.
- (2) **Persons Under 14 Years of Age.** No member under 14 years of age may hunt while possessing a firearm, bow and arrow or crossbow unless he or she is accompanied by a parent, guardian or other adult member designated by a parent or guardian.
- (3) **Parental Obligation.** No parent, guardian or member shall authorize or knowingly permit or encourage a member under 14 years of age to violate this section.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.17.

§ 4038. Hunting While Intoxicated.

- (a) No member shall hunt with a firearm, bow and arrow or crossbow while under the influence of an intoxicant or controlled substance to a degree that the member is incapable of safely using such weapon, or while a member has a blood alcohol concentration of 0.1% or more by weight of alcohol in the member's blood or 0.1 grams or more of alcohol in 200 liters of that person's breath.
- (b) A member hunting with a firearm, bow and arrow, or crossbow shall take or submit to a blood or breath test to determine the amount (if any) of intoxicant or controlled substance present if:
 - (1) the member has been lawfully issued a citation for violating § 4038(a);
 - (2) the member has been involved while hunting in an accident resulting in property damage, personal injury, or death;
 - (3) the member has refused to take a preliminary screening breath test; or
 - (4) a preliminary screening breath test was administered and indicated an alcohol concentration of 0.1% or more.
- (c) If a member refuses to take a test required under § 4038(b), the Band shall impose a civil penalty of \$500 and prohibit the member from hunting for one year.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.18.

§ 4039. Resisting Conservation Wardens.

No member shall assault or otherwise resist or obstruct any law enforcement officer authorized to enforce the provisions of this Chapter in the performance of duty.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.19.

§ 4040. False Impersonation of Warden.

No member shall falsely represent himself or herself to be a law enforcement officer authorized to enforce the provisions of this Chapter, or shall assume to act as such an officer, without having been first duly appointed.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.20.

§ 4041. General Restrictions on Hunting.

- (a) No member shall hunt on private lands unless those lands are open to the general public for hunting by operation of state law.
- (b) **Color of Clothing.** No member shall hunt any wild animal except waterfowl unless at least 50% of the member's outer clothing above the waist is of a highly visible color commonly referred to as hunter orange, blaze orange, fluorescent orange, flame orange, or fluorescent blaze orange while hunting in a state hunting zone during the annual state firearm (not muzzle-loader) deer season, including any extension thereof, for that zone.
- (c) **Transportation of Firearms, Bows and Crossbows.**
 - (1) A member may not transport a firearm in a motor vehicle unless the firearm is:
 - (i) unloaded and in a gun case expressly made to contain a firearm, and the case fully encloses the firearm by being zipped, snapped, buckled, tied, or otherwise fastened, and without any portion of the firearm exposed;
 - (ii) unloaded and in the closed trunk of a motor vehicle; or
 - (iii) a handgun carried in compliance with state law.
 - (2) A person may not transport an archery bow or crossbow in a motor vehicle unless the bow is:
 - (i) unstrung;
 - (ii) completely contained in a case; or
 - (iii) in the closed trunk of a motor vehicle.
- (d) **Discharging Firearms and Bows and Arrows.**
 - (1) **Restrictions related to highways.**
 - (i) A member may not discharge a firearm or an arrow from a bow or crossbow on, over, or across an improved public highway. A member

may not discharge a firearm, bow or crossbow within the right-of-way of an improved public highway. The Commissioner may by order extend the application of this subsection to the taking of migratory waterfowl in designated locations.

- (ii) A person may not discharge a firearm, bow or crossbow on, over, across, or within the right-of-way of an improved public highway at a decoy of a big game animal that has been set out by a Band, State or Commission law enforcement officer.
- (2) **Restrictions related to motor vehicles.** A member may not take a wild animal with a firearm or bow or crossbow from a motor vehicle except that a member may do so from a stationary vehicle which is parked off of and more than 66 feet from the center of an improved two-lane highway, and 122 feet from the center of a four-lane highway, or as permitted in §§ 4041(d)(3) or (4) or 5205(b)(5) of this Chapter.
- (3) **Hunting from vehicle by disabled hunters.** The Department of Natural Resources may issue a special permit to discharge a firearm or bow or crossbow from a stationary motor vehicle within a roadway other than a state or federal highway to a member who is temporarily or permanently physically unable to walk without crutches, braces, or other mechanical support, or who has a physical disability which substantially limits the person's ability to walk. The holder of such a permit must shoot away from and not across the roadway.
- (4) **Taking bounty animals from airplanes and snowmobiles.** The Department of Natural Resources may issue a special permit, without fee, to take animals that the State pays a bounty for, from an airplane or a snowmobile.
- (e) **Restrictions on Use of Bait.**
 - (1) No member shall place, use or hunt over bait containing or contained within metal, plastic, glass, wood or non-degradable materials.
 - (2) No member shall place or hunt over bait or liquid scent within one hundred fifty (150) yards of any campsite used by the public.
 - (3) No member shall use uncured swine products or honey for bait.
 - (4) No member shall use any bait to hunt deer or bear unless the member places a non-degradable identification tag indicating the member's tribal affiliation and tribal identification number on the tree nearest the bait, at eye level, and directly facing the bait.

- (5) This section shall not prohibit hunting over bait materials deposited by natural vegetation or found solely as a result of normal agricultural practices.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.21.

§ 4042. Use of Motor Vehicles to Chase Wild Animals Prohibited.

Except as permitted in § 4041(d), no member shall use a motor vehicle to intentionally drive, chase, run over, kill or take a wild animal.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.21(A).

§ 4043. Hunting with Aircraft Prohibited.

Except as permitted in § 4041(d)(4), no member shall hunt with the aid of an airplane, including the use of an airplane to spot, rally or drive wild animals for hunters on the ground.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.22.

§ 4044. Pivot Guns and Similar Devices Prohibited.

No member shall place, operate or attend, spread, or set any net (except as authorized for fishing pursuant to Chapter 9), pitfall, spring gun, pivot gun, swivel gun, springpole, deadfall or other similar contrivance for the purpose of catching or which might catch, take or ensnare wild animals.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.23.

§ 4045. Tampering with Equipment of Another Prohibited.

No member shall molest, disturb, tamper with or in any way otherwise interfere with any hunting, fishing, trapping or gathering equipment used, set or placed by another except with

permission of the owner of the equipment or the owner or lessee of the land where the equipment is located.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.24.

§ 4046. Endangered and Threatened Species Protected.

- (a) No member shall take, transport, possess, process or sell any endangered and threatened species as defined in § 4011(g), except when:
 - (1) the member has received a permit from the Federal or State government or the Commissioner to do so;
 - (2) it is necessary to prevent injury to human life; or
 - (3) the circumstances set forth in MR 6212.2200 are present.
- (b) The Commissioner may issue such permits only upon a determination that the permitted act will not be detrimental to the species, or when the circumstances set forth in MR 6212.2000 or 2100 are present. A member engaging in a permitted act under this section must display the permit upon request to any person authorized to enforce the provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.25.

§ 4047. Records of Commercial Transactions Required.

- (a) Except for subsistence uses or as otherwise provided in this Chapter, no member shall sell any wild animal or wild plant, the harvest of which is regulated by this Chapter, to any person unless the member maintains a written record made within 24 hours of the transaction on forms prescribed by the Department of Natural Resources indicating the amount and type of resource involved in the transaction, the parties to the transaction, and the date of the transaction.
- (b) Records maintained pursuant to the requirement of paragraph (a), shall be forwarded monthly to the Department of Natural Resources, or its designee.
- (c) No member shall fail to comply with the reporting requirements of paragraph (b).

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.26.

§ 4048. Special Use Areas.

- (a) The Commissioner is authorized to identify special use areas in the Minnesota Ceded Territory, including, but not limited to designated muskie waters, designated experimental waters, fish rearing ponds, forests, forest campgrounds and day use areas, game refuges, northern pike spawning areas, parks, public water access sites, scientific and natural areas, trails, trout streams, and wildlife management areas.
- (b) The Commissioner, with the approval of a majority of the Bands, may close or prescribe other restrictions on hunting, fishing, gathering and other activities by Band members in special use areas identified pursuant to paragraph (a).
- (c) No member shall fail to comply with the closures and other restrictions established by the documents adopted pursuant to paragraph (b).

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.27.

§ 4049. Unprotected Species.

Except as otherwise expressly provided, nothing in this Chapter shall be construed to prohibit or regulate a member's harvest of any unprotected species, as defined in § 4011(t), in the Minnesota Ceded Territory.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.28.

§ 4050. Protected Species.

No member shall hunt, fish, trap or gather any of the following species: paddlefish, spoonbill catfish, wolverine, flying squirrel, timber wolf, cougar, elk, homing pigeon or any wild bird, except those species whose harvest is specifically regulated pursuant to the provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.29.

§ 4051. Permissible Conduct/Assistance by Non-Members.

- (a) Conduct which is not expressly prohibited, restricted or otherwise regulated by this Chapter shall be deemed permissible.
- (b) Except as provided in paragraph (c) or as otherwise provided herein, nothing in this Chapter shall be construed to prohibit a member from hunting, fishing, trapping or gathering with any other person who is not a member of the Band, provided that such other person possesses a license or is otherwise not prohibited from engaging in the activity involved and complies with applicable laws.
- (c)
 - (1) No member shall allow any person who is not a member of the Band to assist, and no such person shall assist, in the activities authorized by this Chapter except in accordance with the provisions of this subsection or as provided in paragraph (b), above.
 - (2) Except as provided in paragraph (b), those persons who may assist a member shall be limited to the member's immediate family, including grandparents, parents, children, spouses and siblings.
 - (3) A member may be assisted by a non-member in accordance with this paragraph (b) only if the member is physically present during the activity which constitutes assistance.
 - (4) Family member "assistance" pursuant to this subsection shall be limited to the following activities, and shall not be allowed for any commercial activity:
 - (i) Operation of a boat during spearing;
 - (ii) Placing or lifting a net;
 - (iii) Setting or lifting of attended lines during ice fishing;
 - (iv) In hunting, all activities except the actual use of a firearm, bow and arrow or crossbow to kill an animal;
 - (v) In trapping and snaring all activities except the setting or placement of traps and snares;

- (vi) In harvesting wild rice, all activities, and in harvesting other plants, all activities except the uprooting, cutting or removal of plant matter from its natural location;
- (vii) In harvesting frogs, turtles, mussels, crayfish and species the harvest of which are not prohibited or otherwise regulated by this Chapter, all activities except the actual use of a device to kill an animal or the specific act which reduces an animal to possession.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.30.

§ 4052. Emergency Closures.

- (a) Notwithstanding any other provisions of this Chapter, the Commissioner is hereby authorized and empowered to order the closure of the harvest activity of any species, generally or with respect to a particular location or body of water, whenever in his or her professional opinion and judgment the continuation of the harvest is likely to result in a harvest exceeding the applicable harvest goals and quotas or may otherwise cause biological harm to the species involved.
- (b) Every reasonable effort shall be made to consult with and obtain the approval of the Bands before ordering an emergency closure, but such closure may be ordered without consultation or approval if circumstances require.
- (c) An emergency closure shall become effective immediately upon issuance or at such time or date as the closure order may direct. Such closure shall be communicated to Band members by the best and swiftest practicable method.
- (d) No member shall violate the terms, conditions, or restrictions of an emergency closure order issued pursuant to this section.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.31.

§ 4053. Management Units.

The Commissioner is authorized to establish and modify management units for any species in order to fulfill the purposes of this Chapter, consistent with the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.32.

§ 4054. Registration Stations.

For the purposes of this Chapter, a Band registration station may include Minnesota Department of Natural Resources field stations or offices as may be designated from time to time by the Department of Natural Resources.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.33.

§ 4055. Transfers.

- (a) Except as otherwise provided in this Chapter, a member may transfer any wild animal lawfully harvested under this Chapter to another person, provided that the transferor of any wild animal the harvest of which is regulated under this Chapter must prepare a receipt containing the following information and give it to the recipient at the time of the transfer:
 - (1) name and address of transferor;
 - (2) name and address of recipient;
 - (3) date of transfer;
 - (4) description of item(s) transferred, including species and number; and
 - (5) permit number under which the animal was taken or, if acquired by the transferor other than by taking, a description of how the animal was acquired.
- (b) A member who is a recipient of a transfer of any wild animal, the harvest of which is regulated under this Chapter, may possess such animal only if he or she receives a receipt from the transferor in accordance with paragraph (1) and retains possession of the receipt.
- (c) A receipt need not be prepared or retained if the transferor and the recipient are members of the same household and the transferred animal is stored in that household.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.34.

§ 4056. Removal of Signs.

No member shall remove or deface a Minnesota Department of Natural Resources sign without approval of the Minnesota Commissioner of Natural Resources. No member shall remove or deface a sign belonging to any of the Bands or the Commission without approval of the appropriate Band or the Commission.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.35.

§ 4057. Hunter, Trapper, and Angler Harassment Prohibited.

- (a) A member who has the intent to prevent, disrupt, or dissuade the taking of a wild animal or enjoyment of the out-of-doors may not disturb or interfere with another person who is lawfully taking a wild animal or preparing to take a wild animal. "Preparing to take a wild animal" includes travel, camping, and other acts that occur on land or water where the affected person has the right or privilege to take lawfully a wild animal.
- (b) A member who has the intent to prevent or disrupt a person from lawfully taking the animals may not disturb or engage in an activity that will tend to disturb wild animals.
- (c) A member who has intent to violate paragraph (a) or (b) may not enter or remain on public lands, or on private lands without permission of the owner.
- (d) A member must obey an order to stop the harassing conduct that violates this section from a person authorized to enforce this Chapter if such person observes the conduct. For purposes of this subsection, "harassing conduct" does not include a landowner's or lessee's action to enforce the trespass law.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.36.

§ 4058. Fishing and Motorboats Prohibited in Certain Areas.

- (a) Except when fishing with a permit issued under Subchapter 9 of this Chapter, no member shall fish or drive a motorboat over waters posted by the State Department of Natural Resources, the Commissioner, or the Commission that are designated as spawning beds or fish preserves.
- (b) An owner of riparian land adjacent to a posted area referred to in paragraph (a) may operate a motorboat through the area by the shortest direct route at a speed of not more than five miles per hour.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.37.

§ 4059. Structures in Public Waters Prohibited.

No member shall construct or maintain a dam or other obstruction, except a boat pier over public waters, or obstruct a creek, stream, or river to prevent the passage of fish with a rack or screen, provided that nothing in this section shall prohibit the use of fish harvesting methods expressly authorized in Subchapter 9 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.38.

§ 4060. Training Dogs.

- (a) A member may not train hunting dogs afield from April 16 to July 14 except by special permit. The Department of Natural Resources may issue a special permit to train hunting dogs afield on land owned by the trainer or on land that the owner provides written permission. The written permission must be carried in personal possession of the trainer while training the dogs.
- (b) A member training a dog afield and carrying a firearm may only have blank cartridges and shells in personal possession when the season is not open for any game bird, except as provided in paragraph (c).
- (c) The Department of Natural Resources may issue special permits to members to use firearms and live ammunition on domesticated birds or banded game birds from game farms for holding field trials and training hunting dogs.

- (d) The Department of Natural Resources may issue special permits to possess one raccoon to train dogs for raccoon hunting.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.39.

§ 4061. Permits to Take Animals Causing Damage.

The Commissioner may issue special permits on such terms and conditions as he deems necessary or appropriate to take wild animals that are damaging or about to damage property owned by the Band or by a Band member. The permit shall require the member to report whether the animal was killed.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 3.40.

SUBCHAPTER 4

ENFORCEMENT

Section

- 4081. Hearings in Band Court.**
- 4082. Enforcement by Deputized Conservation Wardens.**
- 4083. Enforcement by Minnesota Department of Natural Resources Conservation Officers.**
- 4084. Search and Seizure; When Authorized.**
- 4085. Investigations and Citations.**
- 4086. Registration Information.**
- 4087. Penalties.**
- 4088. Enhancement of Forfeiture and Penalties.**
- 4089. Civil Damages.**
- 4090. Seized Wild Animals and Wild Plants.**
- 4091. Schedule of Money Penalties; No Contest.**
- 4092. Collection of Money Penalties.**
- 4093. Parties to a Violation.**
- 4094. Hunting after Revocation or Suspension.**

§ 4081. Hearings in Band Court.

Jurisdiction over all matters arising under this Chapter shall be with the Band court, which shall adjudicate in accordance with the Band and applicable Federal Law, all questions, complaints and alleged violations involving the provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.01.

§ 4082. Enforcement by Deputized Conservation Wardens.

Any provision of this Chapter may be enforced by wardens of the Bands or the Commission. Said wardens are hereby deputized by the Band as Natural Resources Enforcement Officers for the purpose of enforcing this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.02.

§ 4083. Enforcement by Minnesota Department of Natural Resources Conservation Officers.

Minnesota Department of Natural Resources Conservation Officers are hereby empowered to enforce the provisions of this Chapter except on trust lands and to institute proceedings in the Band court by use of citation forms of that Department or to refer the matter to appropriate Band or Commission wardens or the Band prosecutor for further investigation or action.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.03.

§ 4084. Search and Seizure; When Authorized.

Any person authorized to enforce the provisions of this Chapter may conduct a search of an object, place, or person whose conduct is regulated by the provisions of this Chapter, and seize things when the search is made:

- (a) With consent;
- (b) Pursuant to valid search warrant issued by the Band court;

- (c) With the authority and within the scope of a right of lawful inspection as provided in § 4085(a)(1);
- (d) Incident to the issuance of a lawfully issued citation under this Chapter; or
- (e) As otherwise authorized by law or by the provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.04.

§ 4085. Investigations and Citations.

- (a) Any person authorized to enforce the provisions of this Chapter may
 - (1) Subject to paragraph (b), conduct routine inspections of vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, containers, packages, and other receptacles contained therein, utilized by a person in a harvest activity authorized by this Chapter, and of records of commercial transactions required under § 4047 of this Chapter which have not yet been forwarded to the Department of Natural Resources, or its designee;
 - (2) Execute and serve warrants and other process issued by the Band court in accordance with applicable law;
 - (3) Stop and board any boat and stop any automobile or other vehicle pursuant to paragraph (a)(1) or if the person reasonably suspects there is a violation or breach of this Chapter;
 - (4) With or without a warrant, open, enter and examine vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, and packages and other receptacles contained therein, in which the person has probable cause to believe that contraband wild plants or wild animals, or carcasses or part thereof, may be contained or pursuant to paragraph (1)(a);
 - (5) Issue a citation on a form approved by the Band or Band court to any person whose conduct is regulated by the provisions of this Chapter upon reasonable belief that such person has violated or breached a provision of this Chapter; and
 - (6) Seize and hold subject to the order of the Band court any alleged contraband or property which such person reasonably believes may be needed as evidence in connection with the institution of proceedings in Band court or any property otherwise authorized to be seized by the provisions of this Chapter.

- (b) The inspections authorized by paragraph (a)(1) shall be conducted in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.05.

§ 4086. Registration Information.

A person authorized to enforce this Chapter is empowered to request and receive from Band tag and permit issuance stations and harvest registration stations information regarding tag and permit issuance and harvest registration.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.07.

§ 4087. Penalties.

Any member who, for himself or herself, or by his or her agent, servant or employee, or who as an agent, servant or employee of another, violates this Chapter, shall be liable as follows:

- (a) For all violations for which no other amount is specified, a civil remedial forfeiture of not more than \$5,000.00;
- (b) For any violation, a revocation or suspension of hunting, fishing or gathering privileges for a period of time within the discretion of the court;
- (c) For any violation, a civil remedial forfeiture of any property, including boats, motors, vehicles, hunting or fishing equipment, or other property, used in the commission of the violation of this Chapter;
- (d) For all violations, the court may order a natural resources assessment not to exceed 75% of the amount of the civil remedial forfeiture; and
- (e) For all violations, appropriate court costs within the discretion of the court.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.08.

§ 4088. Enhancement of Forfeiture and Penalties.

Upon conviction of any member for a violation of this Chapter when such person has been convicted of a previous violation of this Chapter within a period of one year, the court may enhance any civil remedial forfeiture or other penalty as the court deems appropriate.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.09.

§ 4089. Civil Damages.

In addition to any other penalty allowed by this Chapter, the Band court may award to the Band or, in addition to an action to impose penalties, the Band may bring a civil action for recovery of damages against any member unlawfully killing, wounding, catching, taking, trapping, or having unlawfully in possession any of the following named protected wild plants, wild animals, or any part thereof, and the sum assessed for damages for each wild plant or wild animal, shall not be less than the amount stated in this section:

- (a) Any endangered and threatened species protected under this Chapter, \$875.00.
- (b) Any fisher, marten, prairie chicken, sand hill crane, or raptor, \$262.50.
- (c) Any deer, moose, elk or bear, \$175.00.
- (d) Any bobcat, cougar, fox, beaver, badger or otter, \$87.50.
- (e) Any coyote, raccoon or mink, \$43.75.
- (f) Any sharptail grouse, ruffed grouse, spruce grouse, wild duck, coot, wild goose or brant, \$26.25.
- (g) Any pheasant, Hungarian partridge, bobwhite, quail, rail, Wilson's snipe, woodcock or shorebird, or protected song bird or harmless bird, \$17.50.
- (h) Any muskrat, rabbit or squirrel, \$8.75.
- (i) Any muskellunge or rock or lake sturgeon, \$43.75.
- (j) Any largemouth or smallmouth bass, \$26.25.
- (k) Any brook, rainbow, brown, or steelhead trout, \$26.25.
- (l) Any walleye, northern pike, or any other game fish not mentioned in pars. (9) to (11), \$28.75.

- (m) Any wild animal or wild plant not mentioned in paragraphs (b) to (h), \$17.50.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.10.

§ 4090. Seized Wild Animals and Wild Plants.

No wild animal or wild plant seized pursuant to this Chapter shall be returned to a convicted violator, his or her immediate family, or other member of the hunting, fishing or gathering party.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.11.

§ 4091. Schedule of Money Penalties; No Contest.

The Band Court, in consultation with the Department of Natural Resources, may adopt a schedule of forfeitures to be imposed by the Court upon the receipt of an admission that a violation of this Chapter has occurred, or a plea of no contest, which may be done either in person or in writing. This schedule shall not bind the Court as to forfeitures assessed by the Court after adjudicating a violation where the defendant has entered a plea of not guilty.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.12.

§ 4092. Collection of Money Penalties.

Enforcement of the money penalties imposed pursuant to this Chapter may be had through the collection of penalties from funds of the violator held by the Band, through the imposition of community service work requirements in lieu of money payment, through debt collection mechanisms of the courts of other jurisdictions, or through any other method authorized by law.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.13.

§ 4093. Parties to a Violation.

- (a) Whoever is concerned in the commission of a violation of this Chapter shall be deemed a principal and may be charged with the violation although he or she did not directly commit it and although the member who directly committed it has not been convicted of the violation.
- (b) A member is concerned in the commission of the violation if the member:
 - (1) directly commits the violation;
 - (2) aids or abets the commission of the violation; or
 - (3) is a party to a conspiracy with another to commit, or advises, hires, counsels or otherwise procures another to commit, the violation.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.14.

§ 4094. Harvesting After Revocation or Suspension.

No person whose hunting, fishing or gathering privileges have been revoked or suspended pursuant to § 4087(b) of this Chapter shall hunt, fish, trap or gather any wild plant or wild animal, the harvest of which is regulated by this Chapter, during such revocation or suspension.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 4.15.

SUBCHAPTER 5

WILD RICE HARVESTING REGULATIONS

Section

- 5011. Band Wild Rice Authority.**
- 5012. Permit Required.**
- 5013. Sale of Wild Rice Authorized.**
- 5014. Allowable Methods.**
- 5015. Boats.**
- 5016. Open Season.**
- 5017. Hours.**
- 5018. Harvest Monitoring.**

5019. Harvest by Authorizes Officials.

5020. Assistance by Non-Members.

§ 5011. Band Wild Rice Authority.

- (a) **Recognition.** There hereby is recognized the Mille Lacs Wild Rice Authority which shall have the powers and duties enumerated in this subchapter.
- (b) **Definition.** As used in this subchapter, the "Mille Lacs Wild Rice Authority" shall mean the individuals named by the Department of Natural Resources of the Mille Lacs Band to act in the manner of the traditional Band members for the purposes of implementing the provisions of this subchapter and of regulating the harvest and conservation of wild rice.
- (c) **Powers.** The Mille Lacs Wild Rice Authority may designate the open and closed dates for harvesting wild rice growing within the Minnesota Ceded Territory by posting notice of the open dates on the shores of and at places of access to such waters. The Authority will work with the Department of Natural Resources so that at least 24 hours notice is given before such open dates.
- (d) **Sufficient Notice of Opening Dates.** The posting of an open date for harvesting wild rice pursuant to paragraph (c) shall be deemed sufficient notice of such opening date and no other publication thereof is required.
- (e) **Consultation Required.** In exercising its powers and duties under paragraph (c), the Mille Lacs Wild Rice Authority shall consult with and obtain the advice and recommendations of the Commissioner, and comply with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding wild rice management. The Commissioner shall consult with the Minnesota Department of Natural Resources prior to the opening date.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.01.

§ 5012. Permit Required.

No member shall harvest or gather wild rice pursuant to this Chapter without possessing a valid wild rice harvesting permit issued by the Department of Natural Resources. No wild rice harvest permit is required of helpers of a permittee who participate only in shore operations.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.02.

§ 5013. Sale of Wild Rice Authorized.

- (a) Nothing in this Chapter shall be construed to prohibit members from selling wild rice legally harvested pursuant to this Chapter.
- (b) A member who sells wild rice harvested under this Chapter to non-members shall comply with the following labeling requirements:
 - (1) Wild rice containing a portion of wild rice that is cultivated and offered for wholesale or retail sale must be plainly and conspicuously labeled as either "paddy" or as "cultivated" in letters of a size and form prescribed by the Commissioner.
 - (2) A package containing only 100 percent natural lake or river wild rice that is offered for sale at wholesale or retail sale must be plainly and conspicuously labeled as "100 percent naturally grown, lake and river wild rice" in letters of a size and form prescribed by the Commissioner. A package of wild rice labeled "100 percent naturally grown, lake and river wild rice" must also contain the license number issued under M.S. 84.152 of the last licensed dealer, if any, who handled the wild rice.
 - (3) A package that does not contain 100 percent natural lake or river wild rice may not contain a label authorized under paragraph (2).
 - (4) A package containing a portion of 100 percent naturally grown lake and river wild rice that is harvested by use of mechanical harvesting devices and that is offered for sale at wholesale or retail must be plainly and conspicuously labeled as "machine harvested" in letters of a size and form prescribed by the Commissioner. In addition, the letters "machine harvested" must be placed near the product's identity on the label. Packages containing 100 percent hand-harvested wild rice may be labeled as "hand harvested."
 - (5) A package of cultivated or natural lake or river wild rice offered for sale at wholesale or retail in this state must specify the place of origin of the wild rice by a plain and conspicuous label placed near the product's identity on the label in letters of a size and form prescribed by the Commissioner. Only packages containing cultivated or natural lake or river wild rice that is 100 percent grown in Minnesota may be labeled as "grown in Minnesota."

- (6) A wild rice label that implies the wild rice is harvested or processed by Chippewas is misbranded unless the package contains only 100 percent natural lake or river wild rice harvested by Chippewas.
 - (7) This section does not apply to cultivated or natural lake or river wild rice sold at wholesale or retail outside Minnesota.
- (c) The provisions of § 4047 [Records of Commercial Transactions Required] of this Chapter shall not apply to a member who sells less than 500 pounds of wild rice in Minnesota in a calendar year. For members who sell more than 500 pounds of wild rice in Minnesota in a calendar year, the records under § 4047 of this Chapter shall include, in addition to those specified in that section:
- (1) for members selling or offering for sale wild rice at retail, an invoice indicating the name of the product, amount and date of purchase, and name, address, zip code and telephone number of the supplier; and
 - (2) for members not selling or offering for sale wild rice at retail, an identification of the place of origin of the wild rice, the lot numbers of the wild rice bought and sold in each transaction, and documents that track the rice by lot number through processing and assignment of a final lot number on the finished product.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.03.

§ 5014. Allowable Methods.

- (a) No member shall harvest or gather wild rice by the use of any method other than smooth, rounded cedar rods or sticks not more than 32 inches in length and which are held and operated by hand.
- (b) No member shall bind or otherwise bundle together any wild rice stalks, or harvest or gather any wild rice, the stalks of which have been bound or otherwise bundled together, except by special permit issued by the Commissioner.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.04.

§ 5015. Boats.

No member may harvest or gather any wild rice by the use of any boat longer than 17 feet or wider than 38 inches, or with any modification of the gunwale designed to capture rice outside of the boat, or by the use of any boat propelled by other than muscular power using only a push pole or canoe paddle.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.05.

§ 5016. Open Season.

No member shall harvest or gather wild rice in any body of water except during the time(s) as such body of water is posted open by the Mille Lacs Wild Rice Authority pursuant to § 5011(c) of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.06.

§ 5017. Hours.

No member shall harvest or gather wild rice between sunset and the following 9:00 a.m., Central Time.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.08.

§ 5018. Harvest Monitoring.

No member shall refuse to cooperate with wild rice harvest monitoring activities conducted by one of the Bands or the Commission's Biological Services Division.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.09.

§ 5019. Harvest by Authorized Officials.

Nothing in this Chapter shall prohibit or preclude the Department of Natural Resources, the Commission's Biological Services Division or their designees from harvesting or gathering wild rice for scientific purposes or otherwise within the performance of their duties.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.10.

§ 5020. Assistance by Non-Members.

No person who is not a member of one of the Bands shall assist a member in the gathering of wild rice pursuant to this Chapter except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 5.12.

SUBCHAPTER 6

DEER HARVESTING REGULATIONS

Section

- 5041. Definitions.**
- 5042. Open and Closed Season.**
- 5043. Number of Antlerless Deer Available for Harvest.**
- 5044. Deer Hunting Permits/Tags.**
- 5045. General Deer Registration Provisions.**
- 5046. Deer Seasons; Specific Regulations.**
- 5047. Permissible Methods.**
- 5048. Firearms Restrictions.**
- 5049. Bow/Crossbow Restrictions.**
- 5050. Group Deer Hunting.**
- 5051. Hunting Hours.**
- 5052. Transportation.**
- 5053. Hunting on Certain Public Lands Prohibited.**
- 5054. Hunting on Certain Private Lands Prohibited.**
- 5055. Sale of Deer and Deer Parts.**
- 5056. Sale of Deer Meat to Members.**
- 5057. Level 1 Commercial Harvest Established and Regulated.**

- 5058. Level 2 Commercial Harvest Established and Regulated.**
- 5059. Shining Deer.**
- 5060. Authorization for Closure.**
- 5061. Removal and Retention of Tags.**
- 5062. Assistance by Non-Members.**
- 5063. Moose.**

§ 5041. Definitions.

For the purposes of this Chapter, the following terms shall be construed as follows:

- (a) **"Antlerless deer"** means a deer not having at least one antler of at least 3 inches in length.
- (b) **"Bow"** means any hunting instrument designed for the purpose of propelling arrows which is drawn and held by and through the efforts of the person firing it, but does not include a crossbow.
- (c) **"Crossbow"** means any device using a bow which, once drawn, is held solely by means other than the effort of the person firing it.
- (d) **"Firearm"** means a rifle, muzzleloader, shotgun, handgun or other type of gun.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.01.

§ 5042. Open and Closed Season.

- (a) A closed season is hereby established for the hunting of deer except for the open seasons specified in § 5046 of this Chapter.
- (b) Except as otherwise expressly provided by this Chapter, no member shall hunt deer in the Minnesota Ceded Territory during the closed season.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.02.

§ 5043. Number of Antlerless Deer Available for Harvest.

- (a) The number of antlerless deer which shall be available for harvest in each deer management unit pursuant to this Chapter for each twelve month period commencing July 1 and ending June 30 shall be limited to the number established by the Bands, after consultation with State Department of Natural Resources regarding the total harvestable surplus within the management unit, and in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding deer management. For the purposes of this Chapter, this number shall be termed the treaty quota.
- (b) No member shall hunt antlerless deer in any deer management unit in which a treaty quota has not been established pursuant to paragraph (a) or which has been closed to further antlerless deer hunting pursuant to § 5060 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.03.

§ 5044. Deer Hunting Permits/Tags.

- (a) No member shall hunt deer pursuant to this Chapter without possessing a valid deer hunting permit issued by the Department of Natural Resources.
- (b)
 - (1) No member shall hunt deer without possessing a valid carcass tag issued by the Department of Natural Resources, except as provided in § 5050 [Group Deer Hunting] of this Chapter.
 - (2) The Department of Natural Resources shall issue no more than two (2) carcass tags at a time to a member.
- (c) No member shall hunt antlerless deer without a valid antlerless deer permit bearing the number of the member's carcass tag(s) and valid for the date on which the member is hunting, except as provided in § 5050 [Group Deer Hunting] of this Chapter.
- (d) No antlerless deer permit shall be valid for any deer management unit:
 - (1) which is shown to be closed on the permit;
 - (2) for which the permit is marked as invalid; or

- (3) with respect to a level 1 commercial harvest antlerless deer permit, which lies outside the level 1 commercial harvest zone in which the member is authorized to hunt.
- (e) No member shall move or field dress a deer before affixing to it a valid carcass tag. If the member intends to register the head only pursuant to § 5045(e), the carcass tag must be affixed to the head.
- (f) No member shall move or field dress an antlerless deer without making a slit or punch on the antlerless deer permit through the number of the deer management unit in which the deer has been killed.
- (g)
 - (1) Except as otherwise provided in this Chapter, antlerless deer permits shall be valid for no longer than 14 successive days of an open season during such time periods as the Commissioner shall establish.
 - (2) The Department of Natural Resources shall not issue an antlerless deer permit prior to the first day of the permit period for which the permit will be valid, except:
 - (i) a permit may be issued no more than 7 days prior to the regular deer season established pursuant to § 5046 of this Chapter; and
 - (ii) a permit may be issued no more than 24 hours prior to the start of the State deer season.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.05.

§ 5045. General Deer Registration Provisions.

- (a) A member who has killed a deer pursuant to this Chapter, or, in the instance of group hunting [§ 5050 of this Chapter], whose carcass tag has been affixed to the deer, shall register the deer by presenting it to a registration station operated by one of the Bands no later than 5:00 p.m. of the first working day after the killing.
- (b) Upon registering a deer pursuant to this section, the registering official shall affix a registration tag and duly record in an appropriate manner all information required to be provided by the member at the time of registration.

- (c) A member registering an antlerless deer shall surrender his or her antlerless deer permit upon registration of the deer.
- (d) A member registering a deer shall provide the registering official with the following information: the sex (male or female) and the age (adult or fawn) of the deer, the management unit and county where the deer was taken, the date when the deer was taken, the Band identification number of the member taking the deer and any other relevant information requested by the registering official.
- (e) No member shall register a deer except by presenting the head or the whole carcass to the registering official.
- (f) No person shall provide information to the registering official which the person knows, or has reason to know, is false or misleading.
- (g) An officer of one of the Bands or Commission warden authorized pursuant to § 4082 of this Chapter to enforce the provisions of this Chapter is authorized to register deer in the field provided such warden transmits all registering information to a registration station operated by one of the Bands no later than the registration deadline established by paragraph (a), above.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.06.

§ 5046. Deer Seasons; Specific Regulations.

- (a) All dates given in this section are inclusive.
- (b) **Closed Season.** Except as provided in § 4004 [Religious or Ceremonial Use of Natural Resources] of this Chapter, no member shall hunt deer from January 1 to Labor Day.
- (c) **Regular Season.**
 - (1) An annual regular firearm, bow and crossbow season is hereby established for antlered deer beginning on the day after Labor Day and ending on December 31.
 - (2) An annual regular firearm, bow and crossbow season is hereby established for antlerless deer beginning on the day after Labor Day, and ending on December 31.
- (d) **State Season.** No member shall hunt in a State hunting zone without complying with the provisions of § 4041(b) of this Chapter concerning the wearing of blaze orange

color during the annual state firearm (not muzzle-loader) deer season, including any extension thereof, for that zone.

- (e) No member shall take deer with the aid of dogs.
- (f) **Emergency Closure.** Nothing in this section shall be construed to authorize deer hunting or the opening of a deer hunting season contrary to an Emergency Closure Order issued pursuant to § 4152 [Emergency Closure] of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.07.

§ 5047. Permissible Methods.

No member shall hunt deer except by the use of a firearm, bow or crossbow the use of which is not prohibited by this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.08.

§ 5048. Firearms Restrictions.

No member shall hunt deer:

- (a) With a .22 rimfire rifle, 5 mm rimfire rifle, or .17 caliber centerfire rifle;
- (b) With any handgun except a handgun which is loaded with .357, .41 or .44 magnum caliber ammunition;
- (c) With a smooth-bore muzzle-loader less than .45 caliber or a rifled muzzleloader less than .40 caliber;
- (d) With a projectile other than one with a soft point or which is an expanding bullet type;
- (e) With any shell, cartridge or ammunition known as tracer shells, or with incendiary shells or cartridges (NOTE: Distress flares are exempt from this Section);
- (f) With shot shells containing shot size less than 12 gauge "OO" buckshot;

- (g) With ".00" buckshot when hunting in a State hunting zone during the annual State firearm (not muzzle-loader) deer season, including any extension thereof, for that zone, and no member shall possess such ammunition while hunting in such zone during such season; or
- (h) With a silencer for a firearm or firearm equipped to have a silencer attached.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.09.

§ 5049. Bow/Crossbow Restrictions.

No member shall hunt deer:

- (a) With a bow having a pull of less than 30 pounds or using an arrowhead other than one that has a minimum of two metal cutting edges, is of a barbless broadhead design and has a diameter of at least seven-eighths inch. Nonretractable arrowheads are barbless if the trailing edge of the blade creates a 90 degree or greater angle with the shaft of the arrow. Retractable broadheads may be used if they meet the following criteria:
 - (1) they are at least seven-eighths of an inch in width and no more than two inches in width at or after impact with a big game animal; and
 - (2) they are a barbless design and function in a barbless manner. Retractable arrowheads are a barbless design if the trailing edge of each blade creates a 90 degree or greater angle with the shaft when the blades are fully retracted. Retractable arrowheads function in a barbless manner if, when withdrawn from a big game animal, the blades retract so that the trailing edge of each blade is at a 90 degree or greater angle to the arrow shaft.
- (b) With a crossbow unless the crossbow:
 - (1) is fired from the shoulder;
 - (2) has a minimum draw weight of 100 pounds;
 - (3) has a stock of not less than 30 continuing inches in length;
 - (4) has a working safety; and
 - (5) is used with arrows or bolts of not less than 14 inches with a broadhead.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.10.

§ 5050. Group Deer Hunting.

- (a) As used in this section:
 - (1) **"Contact"** means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid.
 - (2) **"Group deer hunting party"** means 2 or more persons lawfully hunting deer in a group.
- (b) Any member of a group deer hunting party may kill a deer for another member of the group deer hunting party if both of the following conditions exist:
 - (1) At the time and place of the kill, the member who kills the deer is in contact with the person for whom the deer is killed.
 - (2) The member for whom the deer is killed possesses a current unused deer carcass tag, and, if the deer is an antlerless deer, an antlerless deer permit valid for the unit in which the deer is killed.
- (c) A member who kills a deer under paragraph (b) shall ensure that a member of his or her group deer hunting party without delay attaches a deer carcass tag to the deer prior to moving or field dressing it. No member who kills a deer while group hunting shall leave the deer unattended until after it is properly tagged.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.11.

§ 5051. Hunting Hours.

Except as provided in § 5059 [Shining Deer] of this Chapter no member shall hunt deer except during the following hours: One-half hour before sunrise to one-half hour after sunset.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.12.

§ 5052. Transportation.

All deer must be transported in such a manner that inspection by registration agents or conservation officers is readily accomplished.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.13.

§ 5053. Hunting on Certain Public Lands Prohibited.

No member shall hunt deer on any of the following public lands except as noted:

- (a) Designated public campgrounds, public beaches, public picnic areas, and public water access sites.
- (b) Public land within incorporated areas except:
 - (1) bow and gun hunting is permitted on lands which are designated for bow and gun hunting; and
 - (2) bow hunting is permitted on lands which are designated for bow hunting.
- (c) All parks identified by Commissioner's Order under § 4048 of this Chapter except:
 - (1) on lands held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band or its members; or
 - (2) parks or portions thereof in which hunting is allowed under State law, pursuant to a permit issued by the Department of Natural Resources in accordance with the agreement between the Bands and the State regarding special hunts in parks.
- (d) All wildlife refuges, scientific and natural areas, and other closed or restricted areas as established pursuant to § 4048 of this Chapter, except as hunting is permitted by the Commissioner in those areas.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.14.

§ 5054. Hunting on Certain Private Lands Prohibited.

As provided in § 4041(a) of this Chapter, no member shall hunt deer on any privately owned land except those lands which are open to the general public for hunting by operation of state law.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.15.

§ 5055. Sale of Deer and Deer Parts.

- (a) **Head, Skin and Hooves.** Nothing in this Chapter shall be construed to prohibit any member from selling to any person the head, skin and hooves, when severed from the rest of the carcass, of any deer lawfully killed pursuant to this Chapter.
- (b) **Meat.** No member shall sell the meat of any deer killed pursuant to this Chapter, except in accordance with the provisions of §§ 5056, 5057 and 5058 of this Chapter, and if sold for human consumption the provisions of federal law applicable to the sale of meat for human consumption.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.16.

§ 5056. Sale of Deer Meat to Members.

- (a) **Purpose.** The purpose of this section is to regulate the sale of deer meat to members where subsequent sale or resale of the meat to non-members is prohibited. Nothing in this Chapter shall be construed to limit the number of deer, or parts thereof, which may be sold to such members pursuant to this section.
- (b) **Sale to Members.** Any member who has lawfully harvested and registered a deer pursuant to this Chapter may sell the carcass, or any part thereof, of the deer to any other member provided no member who receives a carcass or any part thereof pursuant to this paragraph shall sell the carcass or part thereof to any person who is not a member.
- (c) **Sale to Members of Other Bands.** Any member who has lawfully harvested and registered a deer pursuant to this Chapter may sell the carcass, or any part thereof, of the deer to a member of one of the other Bands, provided that such other Band prohibits its member who receives a carcass or any part thereof pursuant to this

subsection from selling the carcass or part thereof to any person who is not a member of one of the Bands.

- (d) **General Permit/Registration Provisions Unaffected.** The provisions of § 5044 [Deer Hunting Permits/Tags], and of § 5045 [General Deer Registration Provisions] of this Chapter are not affected by the provisions of this Section.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.17.

§ 5057. Level 1 Commercial Harvest Established and Regulated.

- (a) **Purpose.** The purpose of this section is to establish the regulations governing the harvest and registration of no more than 10 deer the meat of which may be sold pursuant to this Chapter when subsequent sale or resale of the meat to non-members is contemplated.
- (b) **Effective Date.**
 - (1) The provisions of this section shall not take effect until such time as the governing body of the Band specifically declares them effective by an enabling resolution.
 - (2) No member shall sell any deer meat pursuant to this section prior to the effective date as declared by the governing body of the Band in accordance with paragraph (1).
- (c) **Level 1 Commercial Harvest Generally.** A member who, between July 1 and June 30, has lawfully harvested deer pursuant to this Chapter may register no more than 10 of those deer for level 1 commercial purposes and may sell to any person only the whole carcasses (except for the heads, skins and hooves) of any of those deer, provided the member:
 - (1) complies with the level 1 commercial harvest provisions of this Section;
 - (2) complies with the terms and conditions of the Band's enabling resolution enacted pursuant to paragraph (b)(1); and
 - (3) otherwise complies with the provisions of this Chapter applicable to deer hunting.
- (d) **Antlered Deer Level 1 Commercial Harvest.**

- (1) A member may register pursuant to this paragraph (d) an antlered deer lawfully harvested in any deer management unit.
 - (2) When registering an antlered deer under this paragraph (d), a member shall present the entire deer carcass for registration and no registering official shall register a deer under this paragraph (d) unless the entire carcass is presented for registration.
 - (3) A member may register an antlered deer under this paragraph (d) at any registration station operated by one of the Bands or with any person authorized to register deer in the field at which time the registering official shall affix a level 1 commercial harvest registration tag to the carcass.
 - (4) This paragraph (d) is not intended to limit a member's ability to otherwise register an antlered deer under the provisions of § 5045 [General Deer Registration Provisions] of this Chapter for noncommercial purposes but only shall serve to condition the harvest and limit the number of antlered deer which the member may register under this subsection.
 - (5) Except as modified by the provisions of this paragraph (d), the provisions of § 5044 [Deer Hunting Permits/Tags] and § 5045 [General Deer Registration Provisions] of this Chapter shall apply to members desiring to register antlered deer under this paragraph (d).
- (e) **Antlerless Deer Level 1 Commercial Harvest.**
- (1) A member may register pursuant to this paragraph (e) a lawfully harvested antlerless deer provided the provisions of this paragraph (e) have been complied with.
 - (2) When registering an antlerless deer under this paragraph (e), a member shall present the entire deer carcass for registration and no registering official shall register an antlerless deer under this paragraph (e) unless the entire carcass is presented for registration.
 - (3) A member desiring to register an antlerless deer under this paragraph (e) for level 1 commercial purposes must obtain a level 1 commercial antlerless deer permit in accordance with the provisions of § 5044 [Deer Hunting Permits/Tags] of this Chapter provided:
 - (i) The permit may be valid at any given time for only one level 1 antlerless deer commercial harvest zone, which shall be designated by the Commissioner;

- (ii) The permit is valid for those deer management units within the level 1 antlerless deer commercial harvest zone which are open to hunting antlerless deer.
- (4) A member desiring to register an antlerless deer under this paragraph (e) for level 1 commercial purposes must register the antlerless deer within and prior to leaving the antlerless deer commercial harvest zone for which an antlerless permit is valid at a registration station operated by one of the Bands or with a person authorized to register deer in the field.
- (5) Upon registration, the registering official shall affix a level 1 commercial harvest registration tag to the carcass.
- (6) This paragraph (e) is not intended to limit a member's ability to otherwise register an antlerless deer under the provisions of § 5045 [General Deer Registration Provisions] of this Chapter for noncommercial purposes but only shall serve to condition the harvest and limit the number of deer which such member may register under this paragraph (e).
- (7) Except as modified by the provisions of this paragraph (e), the provisions of § 5044 [Deer Hunting Permits/Tags] and § 5045 [General Deer Registration Provisions] of this Chapter shall apply to members desiring to register an antlerless deer under this paragraph (e).
- (f) **Transfer of Entire Carcass Required.** No member who has harvested and registered any antlered or antlerless deer pursuant to this section shall sell the deer without transferring the entire carcass of the deer (except for the head, skin and hooves), the registration tag, and such accompanying documents as the Department of Natural Resources may require to the person to whom the deer is sold.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.18.

§ 5058. Level 2 Commercial Harvest Established and Regulated.

- (a) **Purpose.** The purpose of this section is to establish the regulations governing the harvest and registration of deer the meat of which may be sold pursuant to this Chapter where subsequent sale or resale of the meat of more than 10 deer to nonmembers is contemplated.

- (b) **Effective Date.**
- (1) The provisions of this section shall not take effect until such time as the governing body of the Band specifically declares them effective by an enabling resolution.
 - (2) No member shall sell any deer meat pursuant to this section prior to the effective date as declared by the governing body of the Band in accordance with paragraph (1).
- (c) **Level 2 Commercial Harvest Generally.** A member who obtains a Level 2 Commercial harvest permit pursuant to this section and who lawfully harvests and registers deer pursuant to the permit may sell to any person only the whole carcasses (except for the head, skins and hooves) of any of those deer, provided the member:
- (1) complies with level 2 commercial harvest provisions of this section;
 - (2) complies with the terms and conditions of the Band's enabling resolution enacted pursuant to paragraph (b)(1); and
 - (3) otherwise complies with the provisions of this Chapter applicable to deer hunting.
- (d) **Level 2 Commercial Harvest Permit Application.**
- (1) Any member who possesses a valid deer hunting permit may apply on such forms as the Band may prescribe to the Department of Natural Resources for an additional permit authorizing the harvest of deer for level 2 commercial purposes.
 - (2) The Department of Natural Resources shall grant or deny the application, and shall notify the applicant as soon as practicable of its decision.
 - (3) A decision to grant the application may impose conditions upon a Level 2 Commercial Harvest Permit which are more restrictive than the conditions imposed by this section.
- (e) **Terms and Conditions of a Level 2 Commercial Harvest Permit.** A Level 2 Commercial Harvest Permit:
- (1) may authorize a member or group of members to harvest no more than the number of antlerless deer which remain available for harvest from the treaty quota in any one deer management unit;
 - (2) shall restrict the member's hunting of deer pursuant to the permit to only one deer management unit at any given time;

- (3) shall require the permittee to register all deer harvested pursuant to the permit at a registration station operated by one of the Bands located within the management unit for which the permit is valid or within an adjoining unit provided the deer is transported directly to a registration station in that adjoining unit on federal or state highways; and
- (4) shall require that all members named on the permit possess an official copy of the permit and at least one valid carcass tag while hunting pursuant to the permit.
- (f) **Registration of Entire Carcass Required.** When registering a deer under a Level 2 Commercial Harvest Permit, a member shall present the entire deer carcass for registration to an authorized registering official and no registering official shall register a deer under this section unless the entire carcass is presented for registration.
- (g) **Registration Tag Required.** Upon registration, the registering official shall affix a level 2 commercial harvest registration tag to the carcass.
- (h) **General Tagging and Registration Requirements Unaffected.** Except as modified by the provisions of this section, the provisions of § 5044 [Deer Hunting Permits/Tags] and of § 5045 [General Deer Registration Provisions] of this Chapter shall apply to members hunting pursuant to a Level 2 Commercial Harvest Permit.
- (i) **Transfer of Entire Carcass Required.** No member who has harvested and registered any deer pursuant to this section shall sell such deer without transferring the entire carcass of such deer (except for the head, skin and hooves), the registration tag, and such accompanying registration documents as the Department of Natural Resources may require to the person to whom such deer is sold.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.19.

§ 5059. Shining Deer.

- (a) The Commissioner may issue permits that authorize hunting deer, including shining, between one-half hour after sunset and one-half hour before sunrise, in the following limited and highly controlled situations, provided that no such permit shall be effective in a State deer permit area during the State firearm (not muzzle-loader) deer season in that area.
- (b) No member shall hunt or shine deer under this section unless in possession of a permit issued under paragraph (a). Any member hunting or shining deer under this section shall be subject to all terms and conditions in this section and in the permit

- issued under paragraph (a), as well as all other provisions of this Chapter regulating hunting, unless expressly provided otherwise in this section.
- (c) Before issuing a permit under paragraph (a), the Commissioner shall at a minimum provide for:
 - (1) the prior inspection and selection of an appropriate site; and
 - (2) the advance notification of appropriate federal, state and local officials and nearby landowners.
 - (d) For purposes of this section, an "elevated position" shall mean a position that is a minimum of ten (10) feet above the ground in the area comprising a fifty (50) yard radius from the elevated position, and that is within seventeen (17) yards of an area where bait is placed to attract deer. No member hunting or shining deer under this section shall:
 - (1) hunt or shine deer except from an elevated position;
 - (2) discharge a firearm except from an elevated position;
 - (3) possess a loaded firearm except while occupying an elevated position;
 - (4) use any artificial light except a self-contained, battery-operated flashlight containing 5 "D" batteries and a krypton bulb;
 - (5) place more than one bait at the location to be hunted;
 - (6) hunt with the aid of bait larger than sixteen (16) square feet or more than four (4) feet in length on any side;
 - (7) shoot at a deer unless it is at the bait location;
 - (8) hunt deer with a firearm having an affixed scope; or
 - (9) discharge a firearm except while illuminating a deer.
 - (e) A member hunting deer under this section may pursue and take a deer wounded by the member while shooting from an elevated position, provided that the wounded deer may not be dispatched with a firearm prior to one-half hour before sunrise.
 - (f) A permit may be issued under this section only to members who have completed an advanced hunter safety course and received marksmanship training and a marksmanship rating.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.20.

§ 5060. Authorization for Closure.

The Commissioner or his or her designee shall close any deer management unit to antlerless deer hunting prior to the season's closing date if there is no treaty quota remaining in that unit or when it appears imminent that more than the treaty quota for that unit will be harvested prior to the expiration of the next permit period.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.21.

§ 5061. Removal and Retention of Tags.

- (a) No member who kills a deer pursuant to this Chapter shall remove a carcass or registration tag from that deer until such time as the carcass is butchered.
- (b) No member who kills a deer pursuant to this Chapter shall dispose of the registration tag until the meat is consumed, except in accordance with the provisions of §§ 5057(f) and 5058(i) [Transfer of Tags Upon Sale] of this Chapter.
- (c) Any person who receives any meat as a gift or pursuant to § 5056 [Sale to Members] of this Chapter from a member who retains a registration tag under this section is not required to possess a registration tag.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.22.

§ 5062. Assistance by Non-Members.

No person who is not a member of one of the Bands shall assist a member in the hunting of deer pursuant to this Chapter except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.23.

§ 5063. Moose.

Any member lawfully hunting deer under this Chapter may take a moose for subsistence uses only, upon receipt of a special permit from the Commissioner. The Commissioner shall prescribe terms and conditions for such permits which, at a minimum, shall include all provisions of this Subchapter 6, including tagging and registration, that are applicable to deer, and shall be consistent with provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226, regarding moose management.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 6.24.

SUBCHAPTER 7

BEAR HARVESTING REGULATIONS

Section

- 5081. Definitions.**
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- 5102. Removal and Retention of Tags.**
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- 5104. Commercial Harvest Regulated.**
- 5105. Baiting of Bear.**

5106. Shining.

5107. Authorization of Closure.

§ 5081. Definitions.

For the purpose of this Subchapter, the following terms shall be construed to apply as follows:

- (a) **"Bow"** shall have the meaning provided in § 5041(b) of this Chapter.
- (b) **"Crossbow"** shall have the meaning provided in § 5041(c) of this Chapter.
- (c) **"Firearm"** shall have the meaning provided in § 5041(d).

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.01.

§ 5082. Open and Closed Season.

A closed season is hereby established for the hunting of bear except for the open season specified in § 5085 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.02.

§ 5083. Hunting During Closed Season Prohibited.

Except as otherwise expressly provided by this Chapter, no member shall hunt bear in the Minnesota Ceded Territory during the closed season.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.03.

§ 5084. Number of Bear Available for Harvest.

- (a) The number of bear which shall be available for harvest in each bear management zone pursuant to this Chapter for each twelve month period commencing July 1 and ending June 30 shall be limited to the number established by the Bands after

consultation with the State Department of Natural Resources regarding the total harvestable surplus in the zone, and in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding bear management. For purposes of this Chapter, this number shall be termed the treaty quota.

- (b) No member shall hunt bear in any bear management zone in which no bear have been made available for treaty harvest pursuant to paragraph (a) or which has been closed to further bear hunting pursuant to § 5107 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.05.

§ 5085. Bear Season; Specific Regulations.

- (a) All dates given in this section are inclusive.
- (b) **Closed Season.** No member shall hunt bear from November 16 through Labor Day.
- (c) **Bow, Crossbow and Firearm Season.** An annual firearm, bow and crossbow season is hereby established commencing on the day after Labor Day and extending to November 15.
- (d) Nothing in this section shall be construed to authorize bear hunting or the opening of a bear hunting season contrary to an Emergency Closure Order issued pursuant to § 4152 [Emergency Closure] of this Chapter

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.06.

§ 5086. Bear Hunting Permits/Tags.

- (a) No member shall hunt bear pursuant to this Chapter without possessing a valid bear hunting permit.
- (b)
 - (1) Except as provided in § 5092 [Group Bear Hunting] of this Chapter, no member shall take a bear without possessing a bear carcass tag valid for the bear management zone in which the bear is shot.

- (2) The Department of Natural Resources shall issue no more than 1 carcass tag at a time to a member.
- (c) No member shall move a bear before affixing to it a valid carcass tag.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.07.

§ 5087. Bear Registration.

- (a) A member who has killed a bear pursuant to this Chapter, or, in the instance of group hunting [§ 5092 of this Chapter], whose carcass tag has been affixed to the bear, shall register the bear by presenting it to a registration station operated by one of the Bands no later than 5:00 p.m. of the first working day after the killing.
- (b) Upon registering a bear pursuant to this section, the registering official shall affix a registration tag and duly record in an appropriate manner all information required to be provided by the member at the time of registration.
- (c) A member registering a bear shall provide the registering official with the following information: the deer management unit and county where the bear was taken, the date when the bear was taken, the Band identification number of the member taking the bear and any other relevant information requested by the registering official.
- (d) A member registering a bear shall upon request submit biological samples to the Commission according to the instructions of the Commission.
- (e) No member shall register a bear except by presenting the entire carcass to the registering official or, in the alternative, by presenting only the hide with claws, head and teeth attached thereto, provided the carcass tag is firmly affixed to the hide or any part thereof.
- (f) No person shall provide information to the registering official which the person knows, or has reason to know, is false or misleading.
- (g) An officer of one of the Bands or Commission warden authorized pursuant to § 4082 of this Chapter to enforce the provisions of this Chapter is authorized to register bear in the field provided such warden provides all registering information to a registration station operated by one of the Bands no later than 5:00 p.m. of the first working day after the field registration.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.08.

§ 5088. Skinning/Preservation Intact.

No member shall skin or butcher, other than for field dressing, a bear prior to registration unless the member leaves the claws, head and teeth attached to the hide.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.09.

§ 5089. Permissible Methods.

No member shall hunt bear except by the use of any firearm, bow or crossbow, the use of which is not prohibited by this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.10.

§ 5090. Firearms Restrictions.

No member shall hunt bear with a .22 caliber rifle, any firearm the use of which is prohibited pursuant to § 5048 of this Chapter for hunting deer, while possessing more than one handgun, or with the use of buckshot.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.11.

§ 5091. Bow and Crossbow Restrictions.

No member shall hunt bear:

- (a) With a bow having a pull of less than 40 pounds or using an arrowhead other than one that has a minimum of two metal cutting edges, is of barbless broadhead design, and has a diameter of at least seven-eighths inch. Non-retractable arrowheads are barbless

if the trailing edge of the blade creates a 90 degree or greater angle with the shaft of the arrow. Retractable broadheads may be used if they meet the following criteria:

- (1) they are at least seven-eighths of an inch in width and no more than two inches in width at or after impact with a big game animal; and
 - (2) they are a barbless design and function in a barbless manner. Retractable arrowheads are a barbless design if the trailing edge of each blade creates a 90 degree or greater angle with the shaft when the blades are fully retracted. Retractable arrowheads function in a barbless manner if, when withdrawn from a big game animal, the blades retract so that the trailing edge of each blade is at a 90 degree or greater angle to the arrow shaft.
- (b) With a crossbow not in compliance with the provisions of § 5049(b) of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.12.

§ 5092. Group Bear Hunting.

- (a) As used in this section:
 - (1) **"Contact"** means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid.
 - (2) **"Group bear hunting party"** means 2 or more members lawfully hunting bear in a group all using firearms.
- (b) Any member of a group bear hunting party may kill a bear for another member of the group bear hunting party if both of the following conditions exist:
 - (1) At the time and place of the kill, the member who kills the bear is in contact with the person for whom the bear is killed.
 - (2) The member for whom the bear is killed possesses a current unused bear carcass tag valid for the bear management zone in which the bear is killed.
- (c) A member who kills a bear under paragraph (b) shall ensure that a member of his or her group bear hunting party without delay attaches a bear carcass tag to the bear prior to moving or field dressing it. No member who kills a bear while group hunting shall leave the bear unattended until after it is properly tagged.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.13.

§ 5093. Hunting with Non-Members.

Except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter, no member may share with anyone who is not a member of one of the Bands any Band bear permit, carcass tag, gear, or bait except that nothing in this Chapter shall be construed to prohibit a member from hunting with any person who is not a member of the Band during the State of Minnesota bear hunting season if that person has a state bear hunting license valid for that permit area and an unused tag.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.14.

§ 5094. Hunting Hours.

No member shall hunt bear except during the hours established for hunting deer in § 5051 of this Chapter, provided that a bear may be taken while hunting for deer as authorized by § 5059 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.15.

§ 5095. Transportation.

All bears shall be transported in such a manner that inspection by registration agents or conservation officers is readily accomplished.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.16.

§ 5096. Hunting on Certain Public Lands Prohibited.

No member shall hunt bear on any of the following public lands except as noted:

- (a) Designated public campgrounds, public beaches, public picnic areas, and public water access sites.
- (b) Public lands within incorporated areas except
 - (1) bow and gun hunting is permitted on lands which are designated for bow and gun hunting; and
 - (2) bow hunting is permitted on lands which are designated for bow hunting.
- (c) All parks identified by Commissioner's Order under § 4048 of this Chapter except:
 - (1) on lands held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band or its members; or
 - (2) parks or portions thereof in which hunting is allowed under State law, pursuant to a permit issued by the Department of Natural Resources in accordance with the agreement between the Bands and the State regarding special hunts in parks.
- (d) All wildlife refuges, scientific and natural areas, and other closed or restricted areas as established by § 4048 of this Chapter, except as hunting is permitted by the Commissioner in those areas.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.17.

§ 5097. Hunting on Certain Private Lands Prohibited.

As provided in § 4041(a) of this Chapter, no member shall hunt bear on any privately owned land except those lands which are open to the general public for hunting by operation of state law.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.18.

§ 5098. Hunting Bear with Dogs.

No member shall hunt bear with dogs.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.19.

§ 5099. Dens.

No member shall hunt, shoot or disturb a bear in a den.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.20.

§ 5100. Landfills.

No member shall hunt or shoot bear in any dump or sanitary landfill.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.21.

§ 5101. Cubs.

No member may shoot, shoot at, or kill any bear cub or any adult bear accompanied by a cub or cubs.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.22.

§ 5102. Removal and Retention of Tags.

- (a) No member who kills a bear pursuant to this Chapter shall remove a registration tag from the carcass until such time as the carcass is butchered or when the bear is prepared by a taxidermist.
- (b) No member who kills a bear pursuant to this Chapter shall dispose of the registration tag until the meat is consumed.

- (c) Any person who receives any bear meat as a gift or pursuant to § 5103(b)(1) or (2) [Sale to Members] of this Chapter from a member who retains a registration tag under this section is not required to possess a registration tag.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.23.

§ 5103. Sale of Bear and Bear Parts.

- (a) **Head, skin, teeth, claws and paws.** A member who has lawfully harvested and registered a bear pursuant to this Chapter may sell to another person the head, skin, teeth, or claws, whether attached to or separate from the carcass. The skin may contain the attached paws when sold.
- (b) **Meat.** No member shall sell the meat of any bear killed pursuant to this Chapter, except in compliance with the following provisions and if sold for human consumption with the provisions of federal law applicable to the sale of meat for human consumption:
 - (1) **Sale to Members.** Any member who has lawfully harvested and registered a bear pursuant to this Chapter may sell the meat of any carcass, or any part thereof, of the bear to any other member provided no member who receives the meat pursuant to this paragraph (b) shall sell such meat to any person who is not a member.
 - (2) **Sale to Members of Other Bands.** Any member who has lawfully harvested and registered a bear pursuant to this Chapter may sell the meat of any carcass, or any part thereof, of the bear to a member of one of the other Bands provided that such other Band prohibits its member who receives the meat pursuant to this paragraph (b) from selling the meat to any person who is not a member of one of the Bands.
 - (3) **Sale to Non-members.** A member who has lawfully harvested and registered a bear pursuant to this Chapter may sell to a person who is not a member of one of the Bands only the whole carcass (except for the head, skin, teeth, claws and internal organs) of the bear, provided the member:
 - (i) complies with the commercial harvest provisions of § 5104 of this Chapter; and
 - (ii) otherwise complies with the provisions of this Chapter applicable to bear hunting.

(c) **Paws and Internal Organs.**

- (1) **Sale to Non-Members.** No member shall sell to any person who is not a member any paw which has been severed from the skin or any internal organ of any bear harvested pursuant to this Chapter.
- (2) **Sale to Members.** No member shall sell to another member any paw which has been severed from the skin or any internal organ of any bear harvested by the member pursuant to this Chapter except as follows:
 - (i) The member may sell any paw which has been severed from the skin or any internal organ of a bear lawfully harvested pursuant to this Chapter to any other member provided no member who receives any such part pursuant to this paragraph shall sell the part to any person who is not a member.
- (3) **Sale to the Band.** Any member who has lawfully harvested and registered a bear pursuant to this Chapter may sell any paw which has been severed from the skin or any internal organ of the bear to the Band provided:
 - (i) the Band complies with the provisions of paragraph (4) below; and
 - (ii) the member complies with the commercial harvest provisions of § 5104 of this Chapter.
- (4) The Band may purchase or otherwise obtain from a member who has lawfully harvested and registered a bear pursuant to this Chapter any paw which has been severed from the skin or any internal organ of the bear and may sell such part to any person provided:
 - (i) the Band maintains a record of all such transactions, including the name of the member, the name and address of the subsequent purchaser, the carcass tag and registration tag numbers of the bear which was lawfully harvested and the part or parts involved in the transaction;
 - (ii) a bill of sale or other similar document indicating the date of the transaction, the parties to the transaction, and the part or parts involved in the transaction; and
 - (iii) the sale is restricted to the exporting of such part outside the United States.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.24.

§ 5104. Commercial Harvest Regulated.

- (a) **Purpose.** The purpose of this section is to establish the regulations governing the harvest and registration of bear the meat of which, and the teeth, claws, paws or viscera when severed from the carcass of which, may be sold pursuant to this Chapter when subsequent sale or resale of the meat or such parts to non-members is contemplated.

- (b) **Effective Date.**
 - (1) The provisions of this section shall not take effect until such time as the governing body of the Band specifically declares them effective by an enabling resolution.

 - (2) No member shall sell any meat or sell any tooth, claw, paw or organ when severed from the carcass pursuant to this section prior to the effective date as declared by the governing body of the Band in accordance with paragraph (1).

- (c) **Commercial Harvest Permit Application.**
 - (1) Any member who or a group of members which possesses a valid bear hunting permit may apply on such forms as the Band may prescribe to the Department of Natural Resources for an additional permit authorizing the harvest of bear for commercial purposes on the terms and conditions prescribed by this section.

 - (2) The Department of Natural Resources shall grant or deny the application, and shall notify the applicant as soon as practicable of its decision.

 - (3) A decision to grant the application may impose conditions upon a Commercial Harvest Permit which are more restrictive than the conditions imposed by this section.

- (d) **Terms and Conditions of a Commercial Harvest Permit.** A Commercial Harvest Permit:
 - (1) may authorize the permittee to harvest no more than the number of bear available for harvest in any one bear management zone;

 - (2) shall restrict the permittee's hunting of bear pursuant to the permit to only one bear management zone at any given time;

 - (3) shall require a member to register all bear harvested pursuant to the permit at a registration station operated by one of the Bands located within the bear management zone for which the permit is valid or within an adjoining

management zone provided the bear is transported directly to a registration station in that adjoining unit on federal and state highways; and

- (4) shall require that all members named on the Commercial Harvest Permit possess an official copy of the permit and at least one valid carcass tag while hunting pursuant to the permit.
- (e) **Registration of Entire Carcass Required.** When registering a bear under a Commercial Harvest Permit, a member shall present the entire bear carcass (except for the viscera) for registration to an authorized registering official and no registering official shall register a bear under this section unless the entire carcass (except for the viscera) is presented for registration.
- (f) **Registration Tag Required.** Upon registration, the registering official shall affix a commercial harvest registration tag to the carcass.
- (g) **General Tagging and Registration Requirements Unaffected.** Except as modified by the provisions of this section, the provisions of § 5086 [Bear Hunting Permits/Tags] and 5087 [Bear Registration] of this Chapter shall apply to members hunting pursuant to a Commercial Harvest Permit.
- (h) **Transfer of Entire Carcass Required.**
 - (1) No member shall sell to any person who is not a member any bear registered under this section without transferring the entire carcass of such bear, except for the head, skin and viscera, the registration tag, and such accompanying documents as the Department of Natural Resources may require to the person to whom such bear is sold.
 - (i) No member shall sell to any person who is not a member the head or skin of any bear registered under this section without transferring the entire skin with the head, claws and teeth attached, the registration tag if it has not been or will not be transferred pursuant to paragraph (1), and such accompanying documents as the Band may require to the person to whom the skin is sold. If the registration tag is not available for transfer under this subsection because of transfer pursuant to paragraph (1), the member shall transfer a document indicating the carcass tag and registration tag numbers of the bear from which the skin has been removed.
 - (ii) No member shall sell to the Band pursuant to § 5103(c)(3) of this Chapter any organ of any bear registered under this section without transferring to the Band the information and documents required in §5103(c)(4) of this Chapter

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.25.

§ 5105. Baiting of Bear.

A bear may be taken by the use of bait in compliance with § 4041(f) of this Chapter, provided that no member shall establish, service or maintain any bear bait station prior to the Friday nearest August 14.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.26.

§ 5106. Shining.

No member shall hunt bear while shining, as defined in § 4034 of this Chapter, except that during the open bear season established by § 5085 [Bear Season; Specific Regulations] of this Chapter a bear may be taken while hunting from a deer shining stand as authorized by § 5059 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.27.

§ 5107. Authorization for Closure.

The Commissioner or his or her designee shall close any bear management zone to bear hunting prior to the season's closing date if no bear remain available for harvest under this Chapter in that zone.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 7.28.

SUBCHAPTER 8

SMALL GAME HARVESTING REGULATIONS

Section

- 5121. Purpose.
- 5122. Definitions.
- 5123. Open and Closed Seasons.
- 5124. Hunting/Trapping During Closed Season Prohibited.
- 5125. Small Game Quotas.
- 5126. Small Game Harvest Permits/Tags.
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- 5130. Hunting and Trapping on Certain Public Lands Prohibited.
- 5131. Hunting and Trapping on Certain Private Lands Prohibited.
- 5132. Small Game Hunting Prohibited Methods.
- 5133. Shining Raccoon, Fox or Unprotected Species.
- 5134. Identification of Traps Required.
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- 5137. Possession and Sale of Live Small Game Animals.
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- 5140. Sale of Small Game Authorized.
- 5141. Authorization for Closure.
- 5142. Sharing of Equipment/Assisting Band Member.
- 5143. Wild Turkey Hunting Regulations.
- 5144. Small Game Hunting Caliber Restrictions.
- 5145. Taking Animals Causing Damage.

§ 5121. Purpose.

The purpose of this Subchapter is to regulate small game hunting and trapping in the Minnesota Ceded Territory by members.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.01.

§ 5122. Definitions.

For the purpose of this Subchapter, the following terms shall be construed as follows:

- (a) **"Bow"** shall have the meaning prescribed in § 5041(b) of this Chapter.
- (b) **"Crossbow"** shall have the meaning prescribed in § 5041 (c) of this Chapter.
- (c) **"Firearm"** shall have the meaning prescribed in § 5041(d) of this Chapter.
- (d) **"Hunt"** or **"Hunting"** shall have the meaning prescribed in § 4011(k) of this Chapter but shall not include trapping for the purposes of this Subchapter.
- (e) **"Trap"**, in addition to the meaning prescribed in § 4011(s) of this Chapter, means to trap or snare.
- (f) **"Unprotected Species"** means:
 - (1) Opossum, Coyotes (brush wolves), skunk, weasel, woodchuck, gophers, and porcupines;
 - (2) Starlings, English sparrows, Common pigeons, coturnix quail, chukar partridge, monk parakeet and rock doves; and
 - (3) All other unprotected species as defined in § 4011(t) of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.02.

§ 5123. Open and Closed Seasons.

A closed season is hereby established for the hunting and trapping of small game except for the specified open season.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.03.

§ 5124. Hunting/Trapping During Closed Season Prohibited.

Except as otherwise expressly provided in this Chapter, no member shall hunt or trap small game in the Minnesota Ceded Territory during the closed season.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.04.

§ 5125. Small Game Quotas.

The number of otter, bobcat, marten, lynx or fisher which shall be available for harvest pursuant to this Chapter for each twelve month period commencing July 1 and ending June 30 shall be limited to the number established by the Bands, after consultation with the State Department of Natural Resources regarding the total harvestable surplus, and in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding small game management. For purposes of this Chapter, this number shall be termed the treaty quota.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.06.

§ 5126. Small Game Harvest Permits/Tags.

(a)

- (1) No member shall hunt small game pursuant to this Chapter without possessing a valid small game hunting permit.
- (2) No member shall hunt bobcat without possessing a valid carcass tag.

(b)

- (1) No member shall trap small game pursuant to this Chapter without possessing a valid small game trapping permit.
- (2) No member shall trap otter, bobcat or fisher without possessing a valid carcass tag.

(c) Except as provided in § 5137 [Possession and Sale of Live Small Game Animals] of this Chapter, no member shall move or field dress an otter, bobcat, marten, lynx or fisher before affixing to it a valid carcass tag.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.07.

§ 5127. Otter, Bobcat and Fisher Registration.

- (a) A member killing an otter, bobcat or fisher pursuant to this Chapter shall register the animal by presenting it to a registration station operated by one of the Bands no later than 5:00 p.m. of the first working day after killing if the animal was hunted or after retrieval if the animal was trapped.
- (b) Upon registering an otter, bobcat or fisher pursuant to this section, the registering official shall affix a registration tag and shall duly record in an appropriate manner all information required to be provided by the member at the time of registration.
- (c) A member registering an otter, bobcat or fisher shall provide the registering official with the following information: the sex of the animal taken, the deer management unit and county where the animal was taken, the date when the animal was taken, the Band identification number of the member taking the animal and any other relevant information requested by the registering official.
- (d) No member shall register an otter, bobcat or fisher except by presenting the whole carcass to the registering official, or in the alternative, by providing the whole skin to the registering official provided the carcass tag is attached to the skin.
- (e) No member shall provide information to the registering official which the member knows, or has reason to know, is false or misleading.
- (f) An officer of one of the Bands or Commission warden authorized pursuant to § 4082 of this Chapter to enforce the provisions of this Chapter is authorized to register otter, bobcat or fisher in the field provided such warden transmits all registering information to a registration station operated by one of the Bands no later than the registration deadline established by paragraph (a), above.
- (g) No member shall fail to transfer the carcass, except for the skin, of any bobcat, otter or fisher to the Department of Natural Resources or the Commission's Biological Services Division when requested unless the carcass was delivered to a licensed fur buyer.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.08.

§ 5128. Small Game Seasons; Specific Regulations.

- (a) Annual small game trapping seasons for the time periods provided in paragraph (b)(2) and annual small game hunting seasons for the time periods provided in paragraph (c)(2) are hereby established.

(b)

- (1) For the purposes of small game trapping, seasons begin at 6:00 a.m. of the opening date and end at 11:59 p.m. of the closing date.
- (2) The small game trapping season for all species listed in paragraph (c)(2) commences on October 1 and closes on March 31, except that there is no open trapping season for lynx, marten, female pheasants, ruffed grouse or sharptailed grouse.

(c)

- (1) For the purposes of small game hunting, seasons begin and end in accordance with the applicable hunting hours prescribed in § 5129 of this Chapter.
- (2) Specific small game hunting seasons (all dates are inclusive):
 - (i) **Badger:** Day after Labor Day – March
 - (ii) **Bobcat:** October 1 - March 31
 - (iii) **Beaver:** Year Around
 - (iv) **Bobwhite Quail:** Day after Labor Day – March 31
 - (v) **Coyote:** Year Around
 - (vi) **Cottontail Rabbit:** Year Around
 - (vii) **Fisher:** No Open Hunting Season
 - (viii) **Hungarian Partridge:** Day after Labor Day – March 31
 - (ix) **Lynx:** No Open Season
 - (x) **Marten:** No Open Season
 - (xi) **Minx:** October 1 - March 31

- (xii) **Muskrat:** October 1 - March 31
- (xiii) **Otter:** No Open Hunting Season
- (xiv) **Pheasant:** Day after Labor Day – December 31
- (xv) **Raccoon:** Year Around
- (xvi) **Red Fox:** Year Around
- (xvii) **Gray Fox:** Day after Labor Day – March 31
- (xviii) **Red, Gray, and Fox Squirrel:** Year Around
- (xix) **Ruffed Grouse:** Day after Labor Day – March 31
- (xx) **Sharp-Tailed Grouse:** Day after Labor Day – January 31
- (xxi) **Snowshoe Hare:** Year Around
- (xxii) **Unprotected Species:** Year Around

(3) The daily bag limit for each species will be established annually by the Bands, in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding small game management.

(d) Nothing in this section shall be construed to authorize small game hunting or trapping or the opening of a small game hunting or trapping season for a particular species contrary to an Emergency Closure Order issued pursuant to § 4152 [Emergency Closure] of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.09.

§ 5129. Hunting Hours.

- (a) Except where otherwise expressly authorized by this Chapter, no member shall hunt small game except during the hours prescribed by this section.
- (b) Lawful small game hunting hours during open seasons are provided as follows:
 - (1) For all small game animals except fox, raccoon and unprotected species one half hour before sunrise to one half hour after sunset.
 - (2) For fox, raccoon, and unprotected species, 24 hours per day except during the state deer season described in § 5046(d) of this Chapter when small game hunting hours shall be the same as deer hunting hours under this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.10.

§ 5130. Hunting and Trapping on Certain Public Lands Prohibited.

No member shall hunt or trap small game on any of the following lands except as noted:

- (a) Designated public campgrounds, public beaches, public picnic areas, and public water access sites.
- (b) Public lands within incorporated areas except for those lands which are designated for small game hunting or trapping.
- (c) All parks identified by Commissioner's order under § 4048 of this Chapter except:
 - (1) on lands held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band or its members; or
 - (2) parks or portions thereof in which hunting is allowed under State law, pursuant to a permit issued by the Department of Natural Resources in accordance with the agreement between the Bands and the State regarding special hunts in parks.
- (d) All wildlife refuges, scientific and natural areas, and other closed or restricted areas established pursuant to § 4048 of this Chapter, except as small game hunting or trapping is permitted by the Commissioner in these areas.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.11.

§ 5131. Hunting and Trapping on Certain Private Lands Prohibited.

As provided in § 4041(a) of this Chapter, no member shall hunt or trap small game on any privately owned land except those lands which are open to the general public for hunting by operation of state law.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.12.

§ 5132. Small Game Hunting Prohibited Methods.

While hunting small game, no member shall:

- (a) Use or possess any device designed or used for the purpose of driving rabbits out of their holes or dens;
- (b) Use or possess any ferret;
- (c) Molest the nest or den of any squirrel; or
- (d) Use smoke, fire or mechanical devices (including dragging a rope, wire or other device across a field) to take small game.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.15.

§ 5133. Shining Raccoon, Fox or Unprotected Species.

- (a) No member shall hunt raccoon, fox or any unprotected species while shining as defined in § 4034 of this Chapter except:
 - (1) While hunting on foot during the open season for the animal hunted, a member may possess or use a flashlight at the point of kill; or

- (2) While on foot training a dog to hunt or track raccoon, fox or any unprotected species, a member may possess or use a flashlight, provided the member may only have blank cartridges or shells in personal possession.
- (b) No member shall hunt raccoon, fox or any unprotected species while shining during the State deer season described in § 5046(d) of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.16.

§ 5134. Identification of Traps Required.

- (a) No member shall trap pursuant to this Chapter without affixing to each trap or snare a metal tag upon which shall be stamped or engraved the trapper's legible name and address and initials designated by the Department of Natural Resources indicating membership in the Band.
- (b) Any trap or snare which is untagged shall be immediately seized and confiscated, and the owner or member using or attending the untagged trap shall be subject to citation for a violation of the provisions of paragraph (a).

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.17.

§ 5135. Specific Trapping Regulations.

- (a) No member shall:
 - (1) Set out traps or snares except during the open season.
 - (2) Set out bait or scent for attracting furbearing animals except during the open season.
 - (3) Use sight-exposed bait, visible from above, consisting of feathers, animal flesh, fur, hide or entrails within 25 feet of a trap or snare.
 - (4) Use water sets except during the open season for muskrat, beaver or otter.
 - (5) Fail to check all dry land sets and snares and to remove all animals therein at least once each day.

- (6) Place on the ice any artificial house or den, or place therein any trap or snare, which has the purpose or may have the effect of taking furbearers.
 - (7) Set, place, possess or operate on or adjacent to waters any trap other than a snare or steel-jawed trap or live-trap capable of capturing only one animal in a single setting for the purpose of taking furbearing animals.
 - (8) Set, place or operate any killer or conibear trap larger than 7" x 7" unless the trap is at least half submerged under water.
 - (9) Set, place or operate any steel-jawed trap with a spread width of more than 8 inches.
 - (10) Set, place or operate any steel-jawed trap with teeth unless the trap is placed or staked in such a manner as to permit the trap or trapped animal to reach water.
 - (11) Set, place or operate any killer trap of the conibear type greater than 6" x 6" or 6" in diameter in the following locations:
 - (i) Within, or within 3 feet of, any privately constructed or any federal, tribal, state, county or township road right-of-way culvert unless completely submerged in water.
 - (ii) Within 3 feet of any woven or welded wire mesh type fence.
 - (iii) Within 100 yards of any building devoted to human occupancy without the owner's consent.
 - (12) Make an opening in a muskrat house for the purpose of trapping, or otherwise damage a muskrat house, runway or bank den, unless the opening is plugged by replacing all materials removed to prevent freezing within the structure. Traps may be set at natural entrances to muskrat runways and bank burrows.
 - (13) Damage a beaver house or dam or set a trap of any kind inside a beaver house or above the water line on the outside of a beaver house.
 - (14) Fail to check at least once each day all watersets not capable of drowning an animal and remove any animal captured.
 - (15) Except for traps set under the ice, fail to check at least once each third day all watersets capable of drowning a captured animal and remove any animal captured.
- (b) The Commissioner may by order prohibit Band members from setting out snares except where the snare loop is at least half-submerged under water in the portions of

the Minnesota Ceded Territory south of a line following Highway 95 from Taylor Falls to Highway 169, Highway 169 to County Road 16, County Road 16 to County Road 32, County Road 32 to County Road 33, County Road 33 to County Road 34, and County Road 34 to the Mississippi River.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.18.

§ 5136. Specific Snaring Regulations.

- (a) No member shall trap small game by the use of a snare except in compliance with the following provisions:
 - (1) Any snare must be anchored so that it may not be dragged.
 - (2) Any snare must be tagged as in § 5134(a) of this Chapter.
 - (3) No snare may be spring activated.
 - (4) Any snare must be set in a manner which prevents an animal from being suspended unless it is attached to a drowning mechanism.
 - (5) Any upland snare must be removed no later than March 31.
 - (6) Any water set snare must be removed no later than March 31.
 - (7) Except as provided in paragraph (b), any snare must have a mechanical lock which will prevent the snare loop size from becoming smaller than 2-1/2 inches.
 - (8) Except as provided in paragraph (b), any snare must have a swivel device on the anchor end.
 - (9) Any snare or cable wire may not have a diameter exceeding 1/8 inch.
 - (10) No upland snare shall be set on a well-defined deer trail.
 - (11) No upland snare shall be set such that the bottom of the loop is more than 6" above the ground or, when the ground is snow covered, more than 6" above the level of the adjoining trail.
 - (12) No upland snare shall be set with a loop size greater than 10" in diameter.

- (b) Members may use braided picture wire snares without locks or swivels for the purpose of snaring rabbits or hares.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.19.

§ 5137. Possession and Sale of Live Small Game Animals.

- (a) As used in this section, the following terms shall be construed to apply as follows:
 - (1) **"Control temporarily"** means to possess a small game animal for a limited period of time for one of the following purposes:
 - (i) Removal or transportation of a small game animal from one location to a more appropriate location;
 - (ii) Restraint or transportation of a small game animal for treatment or medical care; or
 - (iii) Restraint or transportation of a small game animal for game censuses, surveys or other purposes authorized by the Band.
 - (2) **"Possess"** means to own, restrain, keep in captivity or transport a small game animal.
- (b) Except as otherwise authorized by controlling law or as provided in paragraph (c), no member shall possess, or sell or otherwise transfer to any person, any live small game animal and any member who takes any small game animal shall kill the animal when it is taken or shall immediately release the animal.
- (c) A member may control temporarily a live small game animal for one of the purposes described in paragraph (a)(1), but not for the purpose of selling the live animal.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.20.

§ 5138. Incidental Take.

Any member taking any animal by trapping except during the open season for that animal shall surrender the animal as soon as practicable to the Department of Natural Resources, or shall immediately release the animal if the animal was live trapped.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.21.

§ 5139. Shipment of Furs.

No member shall send or ship any fur from an animal harvested pursuant to this Subchapter unless all fur shipments are marked on the outside of the package showing the number and kinds of hides in the shipment and the name and address of the shipper.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.22.

§ 5140. Sale of Small Game Authorized.

- (a) Nothing in this Chapter shall be construed to prohibit any member from selling the carcass, or any part thereof, of any lawfully harvested small game animal to any person, provided that if a member sells meat for human consumption the member shall comply with the provisions of federal law applicable to the sale of meat for human consumption.
- (b) The provisions of § 4047 [Records of Commercial Transactions] of this Chapter shall not apply to the sale of the fur of any small game furbearing species.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.23.

§ 5141. Authorization for Closure.

The Commissioner, or his or her designee, shall close the small game hunting and trapping season for otter, bobcat or fisher if no otter, bobcat or fisher remain available for harvest under this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.24.

§ 5142. Sharing of Equipment/Assisting Band Member.

No member shall share any small game hunting or trapping equipment with or otherwise be assisted while small game hunting or trapping by any person who is not a member of one of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.25.

§ 5143. Wild Turkey Hunting Regulations.

- (a) **Permit Required.** No member shall hunt wild turkeys without possessing a valid small game hunting permit issued pursuant to the provisions of this Chapter.
- (b) **Tags for Turkey Harvest Zones.** No member shall hunt wild turkeys except in a wild turkey harvest zone established by Commissioner's Order and while in possession of a carcass tag issued by the Department of Natural Resources valid for that zone.
- (c) **Season.** No member shall harvest any wild turkeys except during the open season which shall be established by Commissioner's Order.
- (d) **Bag Limit.** No member shall harvest any wild turkey within a wild turkey harvest zone in excess of the number of valid carcass tags issued to him or her pursuant to paragraph (b) for that zone, and no member shall fail to affix a valid carcass tag to a turkey immediately upon reducing the turkey to possession.
- (e) **Turkey Quotas.** The numbers of bearded and beardless turkeys that may be harvested in each wild turkey management zone under this Chapter shall be limited to the numbers established by the Bands, after consultation with the State Department of Natural Resources regarding the total harvestable surplus in the zone, and in accordance with the provisions in the final decree in *Mille Lacs v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding wild turkey management. For purposes of this Chapter, these numbers shall be termed the treaty quotas.
- (f) **Methods of Turkey Harvest.** No member shall hunt wild turkeys:
 - (1) By any means other than a 20 gauge or larger shotgun or muzzle-loading shotgun 12 gauge or larger, using fine shot size No. 4 or smaller diameter shot, or a bow and arrow or a crossbow.

- (2) With the aid of recorded bird calls or sounds or electrically amplified imitations of bird calls or sounds.
- (3) With the aid of dogs.
- (4) With live decoys for the purposes of enticing wild turkeys.

(g) **Registration Required.**

- (1) A member killing a wild turkey pursuant to this Chapter shall present the carcass for registration to a Band registration station no later than 5:00 p.m. of the next working day following the killing.
- (2) No member shall fail to inform the Band registration station of the location, including the wild turkey management zone if applicable, where the animal was killed or to provide such other information as is required by the registering official.
- (3) No person shall provide information to the registering official which the person knows, or has reason to know, is false or misleading.
- (4) Any officer of one of the Bands or Commission warden authorized pursuant to § 4082 of this Chapter to enforce the provisions of this Chapter is authorized to register wild turkeys in the field provided such warden provides all registering information to a Band registration station no later than 5:00 p.m. of the first working day after field registration.

(h) **Other Restrictions Applicable.**

- (1) While hunting wild turkeys, no member shall fail to comply with the other restrictions applicable to hunting generally or to small game hunting specifically, such as hunting hours, which are not modified or otherwise affected by the provisions of this section.
- (2)
 - (i) No member shall hunt wild turkeys in any area designated pursuant to paragraph (2)(ii) as a wild turkey reintroduction area.
 - (ii) The Commissioner, or his or her designee, is hereby authorized, to designate certain areas within the Minnesota ceded territory as wild turkey reintroduction areas in which the hunting of wild turkeys shall be prohibited.

- (i) **Authorization for Closure.** The Commissioner or his or her designee shall close any wild turkey management zone to bearded or beardless turkey hunting if no bearded or beardless turkeys remain available for harvest under this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.26.

§ 5144. Small Game Hunting Caliber Restrictions.

No member shall hunt any bobwhite quail, hungarian partridge, pheasant, ruffed grouse or sharp-tailed grouse with a rifle (other than a .22 caliber rifle) or a shotgun loaded with a single ball or slug or shot larger than no. BB.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.27.

§ 5145. Taking Animals Causing Damage.

Notwithstanding any other provision of this Chapter, a member may take mink, squirrel, rabbit, hare, raccoon, bobcat, fox, muskrat, or beaver on land owned or occupied by the member where the animal is causing damage. The member may take the animal without a license and in any manner except by poison, or artificial lights in the closed season. Raccoons may be taken under this section with artificial lights during the open season. A member that kills mink, raccoon, bobcat, fox, muskrat, or beaver under this section must bring the entire animal to a Band or Commission conservation officer within 24 hours after the animal is killed.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 8.28.

SUBCHAPTER 9

FISH HARVESTING REGULATIONS

Section

5161. Definitions.

5162. Open and Closed Season.

5163. Fish Available for Harvest.

5164. Fishing Permits.

- 5165. Seasons, Methods, Bag Limits, and Size Limits.
- 5166. Spearing Regulated.
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- 5169. Harpooning and Archery Equipment Regulated.
- 5170. Setlines and Set or Bank Poles Regulated.
- 5171. Designated Landings May Be Required.
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- 5181. Bait Dealers regulated.
- 5182. Commercial Harvest of Game Fish.
- 5183. Commercial Harvest of game Fish Regulated.
- 5184. Buying and Selling Game Fish.
- 5185. Authorization for Closure.
- 5186. Special Sturgeon Regulations.

§ 5161. Definitions.

For the purpose of this Subchapter, the following terms shall be construed as follows:

- (a) **"Dip Net"** means a piece of netting suspended from a round or square frame not exceeding five (5) feet in diameter or five (5) feet in width and five (5) feet in length.
- (b) **"Fyke Net"** or **"Trap Net"** means a device constructed of netting which may employ a frame, wings or wings and leads, and which directs the movement of fish through a funnel of netting into inner hearts or built-in forebays wherein the fish are trapped by their own movement.
- (c) **"Gillnet"** means any net set to capture fish by entanglement rather than entrapment.
- (d) **"Hook and Line"** means a rod and reel or similar device including a tip up and hand held lines, and includes trolling.
- (e) **"Ice Fishing"** means fishing through an artificial hole in the ice.
- (f) **"Net"** means any dip net, fyke net, gill net or seine and when used as a verb means to fish with any of these nets.

- (g) **"Open Water Fishing"** means all fishing other than fishing through an artificial hole in the ice.
- (h) **"Seine"** means a net of mesh no larger than 2" stretch measure, with floats at the top and weights at the bottom, such that it hangs vertically in the water, and which is drawn through the water to capture fish by encircling them rather than entangling them.
- (i) **"Spear"** means a pole tipped with a minimum of three barbed tines which are a minimum of 4-1/2" long and each tine having a barb extending perpendicular which is greater than 1/8 inch; and when used as a verb, means reducing or attempting to reduce to possession fish by means of a hand held spear or other similar device which is directed by the spearer for the purpose of impaling the target fish, and may include the use of artificial light. When used as a verb, spear shall also mean snagging for the purpose of this Chapter.
- (j) **"Set or Bank Pole"** means a pole used for fishing from the banks of lakes or rivers in compliance with the provisions of § 5170 of this Chapter.
- (k) **"Setline"** means a line used for fishing in compliance with the provisions of § 5170 of this Chapter.
- (l) **"Snagging"** means attempting to take or reduce a fish to possession by hooking a fish in a place other than the mouth by the use of a hook and line or any other device which is not a net or spear.
- (m) **"Troll"** means to fish from a motor-driven boat when the motor is running, from any boat in tow of a motor-driven boat when the motor is running, or from a sailboat when in motion.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.01.

§ 5162. Open and Closed Season.

A closed season is hereby established for fishing except for the open seasons specified in this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.02.

§ 5163. Fish Available for Harvest.

The quantity of fish available for harvest pursuant to this Chapter for each twelve-month period from April 1 through March 31 shall be limited by the management measures (including closed seasons, method restrictions, bag limits and size limits) set forth herein and by any quotas established under § 5165(e) of this Chapter. All management measures and quotas shall be consistent with the court's opinions, orders and decrees in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.03.

§ 5164. Fishing Permits.

- (a) No member shall fish pursuant to this Chapter without possessing a valid fishing permit. Such a permit may be the member's tribal identification card required by § 4022(2) of this Chapter.
- (b) No member shall fish with the use of a spear, except while ice fishing, or net pursuant to this Chapter without possessing a spearing or netting permit bearing the member's Band identification number and valid for the date on which and the location at which the member is spearing or netting.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.04.
Band Resolution 10-02-17-03, Attach. A, § 2.a.

§ 5165. Seasons, Methods, Bag Limits, and Size Limits.

- (a) No member shall take, catch, kill or fish for any species of fish: in excess of the bag limit; by means other than those enumerated; during other than the open season; below the minimum size limit; above the maximum size limit; or in locations other than those established by this section.
- (b) With the exception of harvest methods for which no daily maximum harvest limit is established or for which such a limit is established by a special permit, the daily bag limits in paragraph (b) shall be the maximum numbers of the fish species permitted to be taken by one member in any one day by all fishing methods combined. However, nothing herein contained shall prevent the Commissioner from reducing bag limits or closing seasons for any species by Commissioner's Order in the interests of conservation.

- (c) For the purposes of bag limits, "day" shall mean a continuous 24-hour period consistent with the nature of the harvest activity involved.
- (d) Except as provided in paragraphs (b) and (e), the following table hereby establishes the open season, permissible methods, daily bag limits and size limits for the enumerated species of fish in the identified locations.

Kind of Fish and Locality	Methods Permitted	Open Season (Dates are Inclusive)	Bag Limit	Maximum or Minimum Size Limits
1. <u>Largemouth and Smallmouth Bass.</u>				
a. All waters	Open water hook and line fishing, ice fishing (including spearing when ice fishing)	Year Around	10 per person/day	None
b. All waters	Open water spearing subject to § 5166, and snagging	Year Around	10 per person/day except as provided otherwise in § 5166	None
c. All waters	Setline, set or bank pole subject to § 5170	Year Around	10 per person/day	None
d. All waters	All nets (except gillnets) subject to § 5167	Year Around	10 per person/day except as provided otherwise in § 5167	None
e. Waters designated in § 5168 (b)	Gillnets subject to § 5168	Year Around	See § 5168	None
2. <u>Walleye.</u>				
a. All waters	Open water hook and line fishing, ice fishing (including spearing when ice fishing)	Year Around	10 per person/day	None

b.	All waters	Open water spearing subject to § 5166, and snagging	Year Around	Established by permits issued pursuant to § 5166	Maximum of 20 inches except each fisher may take one fish 20-24 inches and one fish any size per permit
c.	All waters	All nets (except gillnets) subject to § 5167	Year Around	Established by permits issued pursuant to § 5167	Identifiable males only prior to May 1. Maximum of 20 inches thereafter
d.	All waters	Setline, set or bank pole subject to § 5170	Year Around	10 per person/day	None
e.	Waters designated in § 5168 (b)	Gillnets subject to § 5168	June 1 to March 1, except Mille Lacs lake open Year Around	See § 5168	None

3. Northern Pike.

a.	All waters	Open water hook and line fishing, ice fishing (including spearing when ice fishing)	Year Around	10 per person/day	None
b.	All waters	Open water spearing subject to § 5166, and snagging	Year Around	10 per person/day except as provided otherwise in § 5166	None
c.	All waters	Setline, set or bank pole subject to § 5170	Year Around	10 per person/day	None
d.	All waters	All nets (except gillnets) subject to § 5167	Year Around	10 per person/day except as provided otherwise in § 5167	None
e.	Waters designated in § 5168 (b)	Gillnets subject to § 5168	June 1 to March 1	See § 5168	None

4. Lake Sturgeon.

- | | | | | | |
|----|--------------------------------------|---|---|---|---|
| a. | St. Croix River below Taylors' Falls | Open water hook and line fishing, ice fishing (including spearing when ice fishing) | June 1 to March 1 (except as provided in § 5186) | 1 per person/year, all methods (except as provided in § 5186) | 45 inch minimum size limit (except as provided in § 5186) |
| b. | St. Croix River below Taylors' Falls | Open water spearing and snagging subject to § 5166 and spearing while ice fishing | June 1 to March 1 (Except that 1 sturgeon per lake may be taken by all members during spring spearing and except as provided in § 5186) | 1 per person/year, all methods (except as provided in § 5186) | 45 inch minimum size limit (except as provided in 5186) |
| c. | St. Croix River below Taylors' Falls | Setline, set or bank pole subject to § 5170 | June 1 to March 1 (except as provided in § 5186) | 1 per person/year, all methods (except as provided in § 5186) | 45 inch minimum size limit (except as provided in 5186) |
| d. | St. Croix River below Taylors' Falls | All nets (except gillnets) subject to § 5167 | June 1 to March 1 (except as provided in § 5186) | 1 per person/year, all methods (except as provided in § 5186) | 45 inch minimum size limit (except as provided in 5186) |
| e. | St. Croix River below Taylors' Falls | Gillnets subject to § 5168 | June 1 to March 1 (except as provided in § 5186) | 1 per person/year, all methods (except as provided in § 5186) | 45 inch minimum size limit (except as provided in 5186) |

5. Muskellunge.

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|----|------------|---|-------------|------------------|---|
| a. | All waters | Open water hook and line fishing, ice fishing (including spearing when ice fishing) | Year Around | 2 per person/day | 40 inch minimum size limit (except no limit when ice spearing in lakes other than Mille Lacs) |
|----|------------|---|-------------|------------------|---|

b.	All waters	Open water spearing subject to § 5166; and snagging	Year Around	Established by permits issued pursuant to § 5166	40 inch minimum size limit (except no limit in lakes other than Mille Lacs)
c.	All waters	Setline, set or bank pole subject to § 5170	Year Around	2 per person/day	40 inch minimum size limit
d.	All waters	All nets (except gillnets) subject to § 5167	Year Around	Established by permits issued pursuant to § 5167	40 inch minimum size limit
e.	Waters designated in § 5168(b)	Gillnets subject to § 5168	June 1 to March 1	See § 5168	40 inch minimum size limit

6. Trout and Salmon (except Lake Trout).

a.	All waters except spring ponds	Hook and line	January 1 to September 30	5 per person/day in aggregate	None
b.	Spring ponds	Hook and line	First Saturday in May to September 30	5 per person/day in aggregate	None

7. Lake Trout.

a.	All waters	Open water hook and line fishing, ice fishing (including spearing when ice fishing), open water spearing and snagging subject to 5166	Year Around	5 per person/day in aggregate	None
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8. White Bass, Rock Bass, Bluegill, Crappie, Pumpkinseed, Yellow Perch, Yellow Bass, Catfish.

a.	All waters	Open water hook and line fishing, ice fishing (including spearing when ice fishing), open water spearing and snagging subject to § 5166; setline, set or	Year Around	None	None
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bank pole subject to § 5170; all nets (excluding gillnets) subject to § 5167

b.	Waters designated in § 5168(b)	Gillnets subject to § 5168	Year Around	None	None
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9. Cisco and Whitefish

a.	All waters	Hook and line fishing, ice fishing (including spearing when ice fishing), open water spearing and snagging subject to § 5166; setline, set or bank pole subject to § 5170; all nets (excluding gillnets) subject to § 5167	Year Around	None	None
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b.	Waters designated in § 5168(b)	Gillnets subject to § 5168	Year Around	None	None
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10. Rough Fish.

a.	All waters	All methods unless otherwise specifically prohibited by this Chapter except gillnetting	Year Around	None	None
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b.	Waters designated in § 5168(b)	Gillnets subject to § 5168	Year Around	None	None
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11. Paddlefish or Spoonbill Catfish.

All waters – No Open Season

- (e)
 - (1) The Commissioner his or her designee is hereby delegated the authority to implement a quota management system for the harvest of any species of fish by one or more methods, in accordance with the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).
 - (2) If it becomes necessary to implement a quota management system for spearing or netting for a particular species in a particular body of water:
 - (i) The Bands shall establish the treaty quota after consultation with the State Department of Natural Resources regarding the total harvestable surplus of the species, and in accordance with the provisions of the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-941226 (D. Minn.) regarding fisheries management.
 - (ii) The Department of Natural Resources shall issue open water spearing and netting permits for the species, which shall set forth any daily bag limits applicable to the species in accordance with §§ 5166, 5167 and 5168 of this Chapter.
 - (iii) No Band member shall net or spear the species without possessing and complying with all terms of such a permit, or in excess of any applicable daily bag limit; and
 - (iv) All Band harvest by spearing and netting for the species shall cease once the quota is taken.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.05.

§ 5166. Spearing Regulated.

- (a) Except while ice fishing, no member shall use or possess any spear on any body of water unless the member possesses a valid permit authorizing the use of a spear on that body of water.
- (b) The Department of Natural Resources may issue an open water spearing permit to a member provided:
 - (1) An open season exists for the species to be fished;
 - (2) The permit shall be valid for no more than 1 day for the spearing of walleye, muskellunge, sturgeon and other game fish;

- (3) The permit sets forth the respective daily bag limits, as determined by the Commissioner, for walleye and muskellunge, and for any other species if a quota management system has been implemented under § 5165(e) of this Chapter for that species;
 - (4) If a quota management system for a species has been implemented under § 5165(3) of this Chapter, the respective number of game fish spearing permits which may be issued at any one time by all Bands shall not exceed the treaty quota divided by the respective daily bag limit for the species;
 - (5) The permit designates the body of water for which the permit is valid;
 - (6) No spearing permit issued pursuant to this section and no netting permit issued pursuant to §§ 5167 or 5168 of this Chapter shall be simultaneously valid for any body of water except for Mille Lacs Lake;
 - (7) The permit requires the member's signature; and
 - (8) The Department of Natural Resources may impose such other terms and conditions as it deems necessary or appropriate, including biological monitoring requirements appropriate to the level of harvest activity on any body of water.
- (c) The Department of Natural Resources may issue an ice spearing permit provided an open season exists for the species to be fished. The permit shall require the member's signature and may incorporate such other terms and conditions as the Department deems necessary or appropriate.
 - (d) No member shall fish by the use of a spear contrary to the terms and conditions of any spearing permit which has been issued to him or her.
 - (e) No member shall fish with the use of a spear which does not meet the requirements of § 5161(i) [Spear Defined] of this Chapter.
 - (f) No member shall possess any fish harvesting devices other than a spear while engaged in open water spearing.
 - (g) No member shall share spearing equipment with any person who is not a member of one of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.
 - (h) The Department of Natural Resources shall not issue a permit for spearing a particular species of fish in a particular body of water under this section if the treaty quota for that species has been taken in that body of water or if that body of water is otherwise closed to spearing.

- (i) The Department of Natural Resources shall not issue an open water spearing permit under this section for game fish unless a monitor(s) will be present at the landing(s) to monitor the spearing harvest.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.06.

§ 5167. Dip Nets, Fyke Nets and Seines Regulated.

- (a) Except while netting for minnows pursuant to § 5181(c) of this Chapter no member shall use or possess any dip net, fyke net or seine on any body of water unless the member possesses a valid permit authorizing the use of a dip net, fyke net or seine on that body of water.
- (b) The Department of Natural Resources may issue a dip netting, fyke netting or seining permit, provided:
 - (1) An open season exists for the species to be fished;
 - (2) The permit shall be valid for no more than 1 day;
 - (3) The permit sets forth the respective daily bag limits, as determined by the Commissioner, for walleye and muskellunge, and for any other species if a quota management system has been implemented under § 5165(e) of this Chapter for that species;
 - (4) If a quota management system for a species has been implemented under § 5165(e) of this Chapter, the respective number of netting permits issued by all Bands shall not exceed the remaining treaty quota divided by the respective daily bag limit for the species;
 - (5) Netting for all species with dip nets, fyke nets or seines is limited to one body of water for the duration of the permit;
 - (6) No netting permit issued pursuant to this section, no gillnetting permit issued pursuant to § 5168 of this Chapter and no spearing permit issued pursuant to § 5166 of this Chapter shall be simultaneously valid for any body of water except Mille Lacs Lake;
 - (7) The permit shall require that all nets authorized comply with appropriate marking and safety requirements;
 - (8) The permit requires the member's signature;

- (9) Permits issued pursuant to § 5181 [Bait Dealers Regulated] of this Chapter shall be governed by the provisions of that section; and
- (10) The Department of Natural Resources may impose such other terms and conditions as it deems necessary or appropriate, including biological monitoring requirements appropriate to the level of harvest activity on any body of water.
- (c) No member shall fish by the use of a dip net, fyke net or seine contrary to the terms and conditions of any netting permit which has been issued to him or her.
- (d) No member shall fish with the use of a dip net, fyke net or seine which does not meet the requirements of § 5161(a) [Dip Net Defined], § 5161(b) [Fyke Net Defined], or § 5161(h) [Seine Defined] of this Chapter.
- (e) Except while netting for minnows pursuant to § 5181 of this Chapter, no member shall possess any fish harvesting device other than a dip net, fyke net or seine while engaged in netting under this section.
- (f) No member shall share netting equipment authorized under this section with any person who is not a member of one of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.
- (g) The Department of Natural Resources shall not issue a permit for netting a particular species of fish on a particular body of water under this section if the treaty quota for that species has been taken in that body of water or if that body of water is otherwise closed to netting.
- (h) The Department of Natural Resources shall not issue a permit for dip net, fyke net, or seine under this section unless a monitor(s) will be present at the landing(s) to monitor the dip net, fyke net, or seine harvest.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.07.

§ 5168. Gillnets Regulated.

- (a) No member shall use or possess any gillnet on any body of water unless the member possesses a valid permit authorizing the use of a gillnet on that body of water.
- (b) The Department of Natural Resources may issue a gillnetting permit for: any lake in excess of 1,000 acres; Ogechie, Onamia or Shakopee Lakes; approximately five miles of the Rum River connecting these lakes; Grindstone Lake; Lake Eleven; Pine Lake; Razor Lake; South Stanchfield Lake; Whitefish Lake; and the 20 miles of the St.

Croix River downstream from the point where the river commences as the border between Minnesota and Wisconsin, provided:

- (1) An open season exists for the species to be fished;
- (2) The permit shall be valid for no more than 1 day for any species of game fish;
- (3) The permit sets forth the respective daily bag limits for all species which can be harvested with gillnets under § 5165(d) of this Chapter, and/or other management measures to control the harvest of such species or any other species that might be harvested incidentally, including without limitation restrictions on the length, depth or bar size of nets, soak times, or location of harvest, as determined by the Commissioner in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding fisheries management.
- (4) Except as provided in paragraph (m), any number of permits may be issued at any one time for any lake but the total length in feet of all gillnets authorized for all permits issued by all Bands on any one lake shall not exceed the number of walleye remaining available for harvest in that lake multiplied by 10;
- (5) Gillnetting for all species is limited to one body of water for the duration of the permit;
- (6) No gillnetting permit issued pursuant to this section, no spearing permit issued pursuant to § 5166 of this Chapter or netting permit issued pursuant to § 5167 of this Chapter shall be simultaneously valid for any body of water except Mille Lacs Lake;
- (7) The permit requires the member's signature;
- (8) Except as provided in paragraph (m), the permit shall establish the location of where the net is set and time the net shall be lifted. No permit shall be issued unless a monitor is available at the time the net is lifted.
- (9) Except as provided in Subs. (2c) and (13), the maximum length, depth and bar size of a gillnet shall be as follows:

Dates	Maximum Allowable Length	Maximum Depth	Maximum Bar Size
Year Round	100 feet	4 feet	1.75 inches

- (10) The Department of Natural Resources or the Commission may impose such other terms and conditions as it deems appropriate or necessary, including

such biological monitoring requirements appropriate to the level of harvest activity on any body of water.

- (c) No member shall fish by the use of a gillnet contrary to the terms and conditions of any gillnetting permit which has been issued to him or her.
- (d) No member shall fish with the use of a gillnet which does not meet the requirements of § 5161(c) [Gillnet Defined] of this Chapter.
- (e) No member shall possess any fish harvesting device other than a gillnet while engaged in gillnetting under this section.
- (f) No member shall share gillnetting equipment authorized under this section with any person who is not a member of one of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Member] of this Chapter.
- (g) Where an annual treaty quota for any fish species as described in § 5163 of this Chapter has been taken on a body of water by any method or combination of methods, no gillnetting under this section may take place on that body of water until the following fishing year.
- (h) No member shall fish with any gillnet unless the gillnet is marked in compliance with the following provisions:
 - (1) Each gillnet shall be marked with two flags or floats, one on each end;
 - (2) Each flag pole shall be two feet or more above the water and have a diameter of two-and-one-half inches or less;
 - (3) Each flag shall be white and ten inches square or larger; or
 - (4) Each float shall be visible from shore;
 - (5) A net shall have attached securely to it an identification tag issued by the Department of Natural Resources showing the band member's identification number.
- (i) No member shall set a gillnet in open water with a topline within 3 feet of the water's surface unless the gillnet is buoyed at 100 foot intervals.
- (j) No member shall set any gillnet in an unsafe manner which shall unreasonably expose boaters and other users of the lake to a foreseeable risk of imminent bodily harm or property damage, or contrary to such other restrictions as the Department of Natural Resources may require.

- (k) No member shall remove a gillnet from a lake without first removing from the gillnet and returning all crayfish to the water or killing all crayfish entangled in the gillnet.
- (l) Except as otherwise provided in paragraph (b)(3), no member shall fail to lift any gillnet at least two times in each continuous 24-hour period during which the net is set, or more frequently as water temperatures may require so as to avoid the spoilage of any fish taken by the net.
- (m) Notwithstanding the provisions of paragraphs (b)(4), (b)(8) and (b)(9), the Department of Natural Resources may issue a permit for gillnetting ciscos (tullibees) on such terms and conditions as it deems necessary or appropriate, provided that at a minimum all other provisions of this section shall otherwise apply to cisco gillnetting permits.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.08.
Band Resolution 08-01-70-98.

§ 5169. Harpooning and Archery Equipment Regulated.

- (a) Harpooning equipment may not be used within 1,000 feet of an established swimming beach. Harpooning equipment may be discharged only when both the equipment and the operator are entirely beneath the surface of the water and may not be carried in a cocked position while out of the water.
- (b) Archery equipment may not be used to take rough fish unless the arrows are tethered or controlled by an attached line. The use of crossbows is prohibited.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.08A.

§ 5170. Setlines and Set or Bank Poles Regulated.

- (a) No member shall fish with or set any setline or set or bank poles except in accordance with the following provisions:
 - (1) A maximum of 20 set or bank poles and 1 setline may be used in no more than 3 bodies of water at any one time.
 - (2) Setlines shall be marked at one end by a white flag ten inches square or larger held by a pole three feet or more above the surface of the water or bank; the

pole shall not be more than two-and-one-half inches in diameter and, if a buoy is used to hold the pole, it shall be round or ovate in shape and have a diameter of fifteen inches or less; the pole shall not be placed in the main channel of any navigable waterway.

- (3) Each set or bank pole and each setline shall have attached securely to it a legible identification tag issued by the Tribe showing the member's tribal affiliation and tribal identification number.
 - (4) Setlines or set or bank poles shall not be equipped with stainless steel hooks.
 - (5) A set or bank pole may not be equipped with more than one line which shall not have more than 2 hooks.
 - (6) A setline shall not have more than 10 hooks.
 - (7) Each set or bank pole and setline shall be lifted and the catch removed at least once each day following the day it was set.
 - (8) Set or bank poles and setlines may only be set, attended or lifted from one hour before sunrise to one-half hour past sunset.
 - (9) The Department of Natural Resources may impose such other terms and conditions as it deems appropriate or necessary, including such biological monitoring requirements appropriate to the level of harvest activity on any body of water.
- (b) No member shall fish with any set or bank pole or setline which does not meet the requirements of § 5161(j) [Set or Bank Pole Defined] or § 5161(k) [Setline Defined] of this Chapter.
 - (c) No member shall possess any fish harvesting device other than a set or bank pole or setline while setting, lifting or attending a set or bank pole or setline.
 - (d) No member shall share any set or bank pole or setline with any person who is not a member of one of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.09.

§ 5171. Designated Landings May Be Required.

- (a) In issuing spearing or netting permits pursuant to §§ 5166, 5167 or 5168 of this Chapter, the Department of Natural Resources may require permittees to use only designated landings for entering upon and exiting from a body of water.
- (b) When so required, no member shall enter upon or exit from a body of water except at such landings designated by the Department of Natural Resources pursuant to paragraph (a).
- (c) Notwithstanding the provisions of paragraphs (a) and (b), a member may exit from a body of water at a location other than a designated landing when necessitated by weather conditions, considerations of personal safety or other appropriate circumstances.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.10.

§ 5172. Reporting and Monitoring.

- (a) No member shall fail to complete catch reports in the manner required by the Department of Natural Resources or comply with any catch monitoring requirements imposed by the Department with respect to any fishing method authorized by this Chapter.
- (b) The Department of Natural Resources shall issue no further permits under this Chapter to any member who has failed to complete and return any creel census questionnaire or other catch report required by paragraph (a).
- (c) In the event that a member fails to report or return a census questionnaire, the Department of Natural Resources shall count the total number of fish allowed by that member's permit against the treaty quota/harvest until such report or census questionnaire is completed and returned in compliance with this section.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.11.

§ 5173. Open Water Hook & Line Fishing Regulated.

- (a) Except as provided in § 5170 [Setlines and Set or Bank Poles Regulated] of this Chapter, no member shall:

- (1) Engage in open water fishing by the use of hook and line with more than six lines with a maximum of two hooks or lures per line; or
 - (2) Engage in open water fishing by the use of any hook and line which is physically unattended for a period of more than one hour.
- (b) Any member engaged in open water fishing by use of any unattended hook and line shall attach to such line a visible identification tag issued by the member's Tribe showing the member's tribal affiliation and tribal identification number.
 - (c) Nothing in this Chapter shall be construed to prohibit any member from trolling on any body of water while engaged in open water fishing by the use of hook and line.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.12.

§ 5174. Ice Fishing Regulated.

- (a) No member shall ice fish by the use of hook and line through a hole larger than 12 inches in diameter.
- (b) No member shall ice fish by the use of a spear through a hole larger than 24 inches by 36 inches.
- (c) No member shall ice fish with unattended lines.
- (d) No member shall ice fish within an ice fishing house or other enclosure, unless the enclosure is equipped with a latch which will permit the door to be readily opened from the outside at all times while the house is occupied.
- (e) No member shall place, maintain or use a house or other enclosure for ice fishing on any body of water unless the owner's name and address or the owner's driver's license number and a durable license tag supplied by the Department of Natural Resources is clearly displayed on the outside of the house.
- (f) No member shall fail to remove an ice fishing house or other enclosure from any body of water on or before March 1 or as otherwise determined by the Department of Natural Resources except that portable shelters may be used while ice fishing after that date provided the portable shelter is removed daily from the ice.
- (g) No member shall share any ice fishing gear, including any spear, with any person who is not a member of one of the Bands except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

- (h) Uncovered holes through the ice must be marked in a manner prescribed by the Department of Natural Resources. Signs indicating winter ice dangers shall bear a two-inch wide orange-colored band forming an upright diamond at least 14 inches in outside height and a printed statement of the source of the danger. The signs shall completely line the perimeter of the ice hazard at intervals not exceeding 75 feet and shall be at least 48 inches above the ice.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.13.

§ 5175. Possession Limit.

- (a)
 - (1) Except as provided in paragraphs (c) and (d), no member shall have in his or her possession any number of fresh fish of any species greater than double the daily bag limit of that species.
 - (2) For the purposes of this section, "**fresh**" means unspoiled and never frozen once removed from a body of water.
- (b) Except as provided in paragraphs (c) and (d), no member shall possess more than one daily bag limit of any species of fish while on any body of water or while fishing.
- (c) The possession limits of this section shall not apply to fresh walleye lawfully taken pursuant to permits issued under §§ 5166 [Spearing], 5167 [Netting] or 5168 [Gillnetting] of this Chapter when such walleye have been monitored and counted as the permittee leaves a body of water.
- (d) The possession limits of this section shall not apply to fresh fish tagged for sale pursuant to § 5183 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.14.

§ 5176. Lake Sturgeon Tagging Required.

- (a) No member shall fail to register with the Department of Natural Resources any lake sturgeon harvested pursuant to this Chapter prior to 5:00 p.m. of the next working day following the harvest.

- (b) Upon registering a lake sturgeon, the registering official shall firmly affix a registration tag of the locking variety to the carcass.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.15.

§ 5177. Incidental Take by Gillnet.

- (a) No member shall retain possession of any species of fish for which gillnetting is not permitted or in excess of any applicable daily bag limit, if harvested in a gillnet, and no member shall fail to either:
 - (1) Return to the water any such fish which appears capable of surviving (that is, is able to maintain itself upright), provided that tullibee shall not be returned to the water and, when water temperatures are over 50 degrees, yellow perch shall not be returned to the water; or
 - (2) Transfer possession of such fish as soon as practicable to the Department of Natural Resources or to a person authorized to enforce this Chapter.
- (b) Any such fish transferred pursuant to paragraph (a)(2) shall be disposed of by the Band for charitable purposes but shall not be returned to the member or his or her family, as defined in § 4011(r) of this Chapter.
- (c) Any fish take as incidental catch shall be counted toward any applicable treaty quota for that species.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.16.

§ 5178. Live Bait Restrictions.

- (a) No member shall use as live bait while fishing pursuant to this Chapter: carp, goldfish, redhorse, fresh water drum, burbot, bowfin, garfish, buffalo fish, lamprey, alewife, gizzard shad, smelt, goldeye, mooneye, carpsucker, quillback, ruffe, crayfish or other non-native or exotic species designated by the Commissioner.
- (b) No member shall import minnows into the State of Minnesota or release any minnow or other bait fish on any waters or shores.

- (c) No member shall use as bait while fishing in a water body pursuant to this Chapter game fish taken from another water body.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.17.

§ 5179. Carp Fingerlings.

No member shall transport carp fingerlings, provided that live carp fingerlings, except grass carp, taken on Minnesota-Wisconsin boundary waters, may be transported for sale or for bait only by boat or other floating conveyance on the boundary waters where taken.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.17A.

§ 5180. Fishing in Certain Locations Prohibited or Restricted.

- (a) No member shall fish at any time within 50 yards of a Band, Commission or Minnesota Department of Natural Resources assessment net or its leads.
- (b) No member shall fail to comply with the closures and other restrictions with respect to fish refuges and fish management experimental bodies of water established pursuant to § 4048 [Wild Animal Refuges Established] of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.18.

§ 5181. Bait Dealers Regulated.

- (a) No member shall set, use or operate any net or other device for taking, catching or killing minnows except as provided by this section.
- (b) No member shall take minnows, except under special permit issued by the Commissioner, in the following waters [list lakes/streams in ceded territory from MR 6262.0400].

- (c) Any member may take or possess less than 600 minnows by the use of any net authorized by § 5167 [Dip Nets, Fyke Nets and Seines] of this Chapter without a permit provided that while netting for minnows:
 - (1) No member shall remove or destroy vegetation, logs or habitat features;
 - (2) No member shall handle, transport or hold minnows except in a manner which will reasonably ensure the minnows will be kept alive and healthy; and
 - (3) No member shall fail to promptly return unharmed to the water all minnows not kept and all game fish caught by a net.
- (d) No member shall take or possess more than 600 minnows at any time unless the member possesses a permit issued pursuant to paragraph (e).
- (e) The Department of Natural Resources may issue a permit to a member authorizing the taking or possession at any time of more than 600 minnows on the following terms and conditions:
 - (1) A permit shall include the member's name, address and Band identification number;
 - (2) A permit shall specify the waters where the permit is valid and the number of nets or other devices which may be utilized at any time;
 - (3) A permit shall describe the nets or other devices authorized;
 - (4) A permit shall require that minnow traps be identified in a permanent and legible manner and display the permittee's name and address. The required information must be displayed on a waterproof tag securely attached to the trap or be branded or stamped into a permanent portion of the trap. On leech traps, the required information may also be painted on the trap with oil base paint or indelible ink. Identification on non-submerged traps must be unobscured and located above the water surface;
 - (5) A permit shall provide that a minnow trap, string of minnow traps, hoop net, or trap net, including the wings or leads, may not extend across more than one-half the width of any stream, nor be set within 50 feet in any direction of any portion of another person's minnow trap, hoop net or trap net, provided that an individual minnow trap may be placed within not less than 20 feet in any direction of any portion of another such trap, and individual submerged traps may be set up to four traps at one site, side by side, within 12 inches of one another;
 - (6) A permit shall provide that minnow traps must be lifted and emptied of minnows and other fish as frequently as necessary to prevent the loss of

minnows or other fish, provided that under no circumstances may minnow traps be emptied less frequently than once every 72 hours between April 1 and October 31 and once every seven days between November 1 and March 31. All traps must be removed from the water and shoreline immediately upon ceasing trapping operations;

- (7) A permit may be valid for no more than 12 months from the date of issuance;
 - (8) A permit shall require the member to transport, handle and hold minnows in a manner which will reasonably ensure the minnows will be kept alive and healthy;
 - (9) A permit shall require all minnows not kept and all game fish caught by the nets or other devices to be promptly returned unharmed to the water;
 - (10) A permit shall prohibit the removal or destruction of vegetation, logs and other habitat features; and
 - (11) The Department of Natural Resources may impose such other terms and conditions as it deems appropriate or necessary, including biological monitoring requirements appropriate to the level of harvest activity on any body of water.
- (f) No member shall take or attempt to take minnows contrary to the terms and conditions of any permit issued under paragraph (e).
 - (g) Nothing in this Chapter shall be construed to prohibit a member from selling to any person minnows lawfully taken pursuant to this section, provided that the member shall comply with § 404 [Records of Commercial Transaction] of this Chapter, and provided further that vehicles used for transporting minnows for sale shall display an identification number issued by the Department of Natural Resources on the driver's door.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.19.

§ 5182. Commercial Harvest of Game Fish.

- (a)
 - (1) The provisions of this section and § 5183 of this Chapter shall not take effect until such time as the governing body of the Band specifically declares them to be effective by an enabling resolution.

- (2) No member shall engage in the commercial harvest of any game fish prior to the effective date as declared by the governing body of the Band pursuant to paragraph (a)(1).
- (b) At such time as the provisions of this section are declared effective pursuant to paragraph (a)(1), no member shall engage in the commercial harvest of any game fish, except in accordance with the provisions of § 5183 of this Chapter and in accordance with the terms and conditions of the Band's enabling resolution.
- (c) Nothing in this Chapter shall be construed to prohibit any member from engaging in the commercial harvest of any fish which is not a game fish provided such harvest is consistent with all other provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.20.

§ 5183. Commercial Harvest of Game Fish Regulated.

- (a) The purpose of this section is to establish the regulations governing the commercial harvest of game fish.
- (b) No member shall engage in the commercial harvest of game fish without a permit authorizing such commercial harvest and tagging all fish to be sold commercially in accordance with paragraphs (c) and (d).
- (c) The Department of Natural Resources may issue permits for the commercial harvest of game fish, which shall incorporate all provisions of this Subchapter 9, including the provisions of §§ 5166 [Spearing Regulations], 5167 [Dip Nets, Fyke nets and Seines Regulated], and 5168 [Gillnets Regulated] of this Chapter, provided that:
 - (1) the Department shall not permit the use of gillnets in any lakes other than Mille Lacs Lake from March 2 to May 31 for commercial harvests; and
 - (2) the Department may authorize the use of gillnets for commercial harvests in Mille Lacs Lake only with the following maximum length, depth and bar sizes:

Dates	Maximum Allowable Length	Maximum Depth	Maximum Bar Size
March 2 to May 31	100 feet	4 feet	1.75 inches
June 1 to March 1	300 feet	6 feet	1.75 inches

- (d) The Department of Natural Resources shall issue sequentially numbered tags after the fish are landed for all game fish to be sold commercially on the following conditions:
 - (1) Each whole game fish sold must be tagged prior to being sold;
 - (2) If filleted prior to sale, all fillets from a game fish must be tagged together or otherwise packaged together with one tag prior to sale. The tags shall be of the locking variety and designed so that when packaged together the tag cannot be used again.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.21.
Band Resolution 10-02-17-03, Attach. A, § 2.b.

§ 5184. Buying and Selling Game Fish.

- (a) Except for subsistence uses as defined in § 4011(r) of this Chapter, no member shall buy or sell game fish taken from waters in the Minnesota Ceded Territory unless such fish were taken in a commercial harvest permitted under § 5183(c) of this Chapter.
- (b) A member engaged in a business providing services to a member taking fish may not prepare dressed game fish for shipment without a fish packer's license issued by the Department of Natural Resources.
- (c) The fish packer must maintain a permanent record of:
 - (1) the name, address and license number of the shipper;
 - (2) the name and address of the consignee; and
 - (3) the number of each species and net weight of fish in the shipment.
- (d) The license and records of the fish packer must be made available to a person authorized to enforce the provisions of this Chapter upon request.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.21A.

§ 5185. Authorization for Closure.

The Commissioner, or his or her designee, shall close any body of water to fishing for any species by any harvest method which is subject to a treaty quota when such treaty quota has been taken.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.23.

§ 5186. Special Sturgeon Regulations.

- (a) The regulations set forth in this Section shall supersede the season and size restrictions and the bag limits provided by § 5165(d)(4) of this Chapter.
- (b) On lakes with adequate population estimates for sturgeon which are subject to a quota management system on fish species referenced in § 5165(e) of this Chapter, the Department of Natural Resources may issue permits authorizing harvest of sturgeon by Band members, provided total harvest by all Bands on such lakes is limited to a quota established after consultation with the State Department of Natural Resources and in accordance with the provisions of the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.) regarding fisheries management, and a bag limit is incorporated in the permit.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 9.26.

SUBCHAPTER 10

MIGRATORY BIRD HARVESTING REGULATIONS

Section

- 5201. Definitions.**
- 5202. Closed Season.**
- 5203. Seasons and Annual Harvest Regulations.**
- 5204. Daily Bag Limits and Possession Limits.**
- 5205. Methods.**
- 5206. Shooting Hours.**
- 5207. Hunting on Certain Public Lands Prohibited.**
- 5208. Hunting on Certain Private Lands Prohibited.**
- 5209. Wanton Waste of Birds.**
- 5210. Decoys.**

- 5211. **Structures.**
- 5212. **Duck Blinds.**
- 5213. **Possession Regulated.**
- 5214. **Transportation Regulated.**
- 5215. **Exportation Regulated.**
- 5216. **Permit Required.**
- 5217. **Closed Areas.**
- 5218. **Authorization for Emergency Closure.**
- 5219. **Enforcement by U.S. Fish and Wildlife Service Personnel.**
- 5220. **Assistance by Non-Members.**
- 5221. **Sale of Migratory Birds Parts Regulated.**

§ 5201. Definitions.

For the purposes of this Subchapter, the following terms shall be construed as follows:

- (a) **"Bag Limits"** mean:
 - (1) **"Aggregate bag limit"** means a condition of taking in which two or more usually similar species may be bagged (reduced to possession) by the member in predetermined or un-predetermined quantities to satisfy a maximum take limit.
 - (2) **"Daily bag limit"** means the maximum number of migratory birds of a single species or combination (aggregate) of species permitted to be taken by one member in any one day during the open season.
 - (3) **"Aggregate daily bag limit"** means the maximum number of migratory birds permitted to be taken by one member in any one day during the open season when such member hunts for more than one species for which a combined daily bag limit is prescribed.
 - (4) **"Possession limit"** means the maximum number of migratory birds of a single species or a combination of species permitted to be possessed by any one member when lawfully taken in the ceded territory.
- (b) **"Migratory Bird"** means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in 50 CFR Section 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or in part of any part, nest or egg thereof.
- (c) **"Migratory Game Birds"** means coots, gallinules, sora and Virginia rails, American woodcock, common snipe, and migratory waterfowl.

- (d) **"Migratory Bird Preservation Facility"** means:
- (1) Any person who, at his residence or place of business and for hire or other consideration; or
 - (2) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or
 - (3) Any hunting club which, in the normal course of operations receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage, or shipment.
- (e) **"Personal abode"** means a member's principal or ordinary home or dwelling place, as distinguished from one's temporary or transient place of abode or dwelling such as a hunting club, or any club house, cabin, tent or trailer house used as a hunting club, or any hotel, motel, or rooming house used during a hunting, pleasure or business trip.
- (f) **"Take"** means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture or collect.
- (g) **"Waterfowl"** means any migratory bird of the family Anatidae, including ducks, geese, swans, brant, and mergansers.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.01.

§ 5202. Closed Season.

- (a) A closed season is hereby established for the hunting of migratory birds except for the open seasons specified in § 5203 of this Chapter.
- (b) Except as otherwise expressly provided by this Chapter, no member shall take any migratory bird during the closed season for that animal.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.02.

§ 5203. Seasons and Annual Harvest Regulations.

- (a) Upon publication in the Federal Register of the U.S. Fish and Wildlife Service Final Rule establishing federal regulations in response to the Band's proposal pursuant to the Service's Interim Guidelines described in the June 4, 1985, Federal Register (50 FR 23467), all such regulations as to season, daily bag and possession limits, and other conditions, shall be and hereby are incorporated into this Chapter, as if fully set forth in their entirety herein, and shall constitute Band regulations governing member migratory bird hunting for the seasons so established.
- (b) No member shall take or possess migratory birds or otherwise engage in any activity contrary to the federal regulations incorporated into this Chapter pursuant to this section on a season-by-season basis.
- (c) Any violation of such annual federal migratory bird regulations incorporated herein shall be deemed a violation of this Chapter, and shall be subject to the jurisdiction of the Band court pursuant to the provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.03.

§ 5204. Daily Bag Limits and Possession Limits.

- (a) No member shall take any migratory bird in any one day in excess of the daily bag limit for that species or in excess of the aggregate daily bag limit, whichever applies, as established by this Subchapter.
- (b) No member shall possess migratory birds taken in excess of the possession limits for that species established by this Subchapter.
- (c) When a daily bag limit or aggregate daily bag limit is established in terms of "points", the daily bag limit or aggregate daily bag limit, whichever applies, is reached when the point value established by this Subchapter of the last migratory bird taken during that day reaches or exceeds the maximum number of points allowed for that day.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.04.

§ 5205. Methods.

- (a) Unless expressly modified by a U.S. Fish and Wildlife Service Final Rule incorporated into this Chapter pursuant to § 5203(a) of this Chapter, migratory birds for which open seasons are prescribed may be taken by any method except those prohibited in this section.
- (b) No member shall take migratory birds:
 - (1) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;
 - (2) With a shotgun of any description capable of holding more than five shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;
 - (3) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;
 - (4) From or by any means, aid, or use of any motor vehicle (not including a motorboat or sailboat), motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;
 - (5) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and/or the sails furled, and its progress therefrom has ceased: Provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power;
 - (6) By the use or aid of live birds as decoys (among other things, it shall be a violation of this section for any member to take migratory waterfowl in an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of 10 consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl);
 - (7) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;
 - (8) By the aid of baiting, or on or over any baited area. As used in this subsection, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked or unshucked corn, wheat, other grain, salt, or

other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited area" means any area where shelled, shucked or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this section shall prohibit:

- (i) the taking of all migratory birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; and
 - (ii) the taking of all migratory birds, except waterfowl, on or over any lands where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes: Provided, that manipulation for wildlife management purposes does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown.
- (9) While possessing shotshells loaded with shot other than steel shot or such shot approved as non-toxic by the Director of the U.S. Fish and Wildlife Service, provided that this restriction applies only to the taking of ducks, geese (including brant), swans and coots and any species that make up aggregate bag limits during concurrent seasons with the former;
 - (10) With shot larger than size T; or
 - (11) By the use or aid of any motor driven land, water, or air conveyance, or any sailboat, used for the purpose of or resulting in the concentrating, stirring up, driving, or rallying any migratory bird.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.05.

§ 5206. Shooting Hours.

No member shall take migratory birds except during the lawful hunting hours established by the U.S. Fish and Wildlife Service Final Rule incorporated into this Chapter pursuant to § 5203(a) of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.06.

§ 5207. Hunting on Certain Public Lands Prohibited.

No member shall hunt migratory birds on any of the following lands except as noted.

- (a) Designated public campgrounds, public beaches, public picnic areas, and public water access sites.
- (b) Public lands within incorporated areas except those lands which are designated for migratory bird hunting.
- (c) All parks identified by Commissioner's order under § 4048 of this Chapter except:
 - (1) on lands held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band or its members; or
 - (2) parks or portions thereof in which hunting is allowed under State law, pursuant to a permit issued by the Department of Natural Resources in accordance with the agreement between the Bands and the State regarding special hunts in parks.
- (d) All wildlife refuges, scientific and natural areas, and other closed or restricted areas established pursuant to § 4048 of this Chapter, except as migratory bird hunting is allowed by the Commissioner in those areas.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.06A.

§ 5208. Hunting on Certain Private Lands Prohibited.

As provided in § 4041(a) of this Chapter, no member shall hunt migratory birds on any privately owned land except those lands which are open to the general public for hunting by operation of state law.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.06B.

§ 5209. Wanton Waste of Migratory Birds.

No member shall kill or cripple any migratory bird pursuant to this Chapter without making a reasonable effort to retrieve the bird, and retain it in his or her actual custody, at the place where taken or between that place and any of the following places:

- (a) The member's automobile or principle means of land transportation;
- (b) The member's personal abode or temporary or transient place of lodging;
- (c) A migratory bird preservation facility as defined by § 5201(b) of this Chapter;
- (d) A post office; or
- (e) A common carrier facility.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.07.

§ 5210. Decoys.

No member shall take any migratory bird with decoys which are:

- (a) Placed beyond 200 feet from the location in which the member is located;
- (b) Placed in the water prior to one hour before opening of shooting hours; or
- (c) Left in the water more than 20 minutes after the close of shooting hours.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.08.

§ 5211. Structures.

No member shall hunt migratory birds from any publicly owned pier, dam, dock, breakwater, or similar man-made structure where the prohibition of such hunting is clearly posted.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.09.

§ 5212. Duck Blinds.

No member shall establish a duck blind on public waters or public land prior to one (1) hour before the migratory bird season or leave it established beyond seven (7) days after the close of the season. No member shall leave any waterfowl hunting blind in open public waters after dark.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.10.

§ 5213. Possession Regulated.

- (a) **Prohibited if taken in violation of sections 5205 - 5212 of this Chapter.** No member shall at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of any portion of §§ 5205 - 5212 of this Chapter.
- (b) **During closed season.** No member shall possess any freshly killed migratory bird taken in the Minnesota Ceded Territory and during the closed season.
- (c) **Possession limit.** No member shall possess more migratory birds taken in the Minnesota Ceded Territory than the possession limit or the aggregate possession limit, whichever applies. This section applies only to transportation. Possession limits for the purposes of this subsection do not include birds which are cleaned, dressed, and at the member's primary residence.
- (d) **Opening day of a season.** No member on the opening day of the season shall possess any migratory bird freshly killed off of the reservation in excess of the daily bag limit, or aggregate daily bag limit, whichever applies.
- (e) **Field possession limit.** No member shall possess, have in custody, or transport more than the daily bag limit, or aggregate daily bag limit, whichever applies, of migratory birds, tagged or not tagged, at or between the place where taken and any of the following places:

- (1) The member's automobile or principle means of land transportation;
 - (2) The member's personal abode or temporary or transient place of lodging;
 - (3) A migratory bird preservation facility as defined in § 10.01(3) of this Chapter;
 - (4) A post office; or
 - (5) A common carrier facility.
- (f) **Tagging requirements.** No member shall put or leave any migratory bird at any place (other than his or her personal abode), or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such bird has a tag attached, signed by the member, stating his or her address, the total number and species of birds, and the date such birds were killed. Migratory birds being transported in any vehicle as the personal baggage of the processor shall not be considered as being in storage or temporary storage.
- (g) **Custody of birds of another.** No member shall receive or have in custody any migratory bird belonging to another person unless such bird has been tagged as required by paragraph (f).
- (h) **Possession of live birds.** Every migratory bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit. No member shall at any time, or by any means, possess or transport live migratory game birds taken pursuant to this Chapter.
- (i) **Termination of possession.** Subject to all other requirements of this Subchapter, the possession of any migratory bird taken by any member shall be deemed to have ceased when such bird has been delivered by him or her to another person as a gift; or have been delivered by him or her to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or a common carrier to some person other than the member.
- (j) **Gift of migratory bird.** No member shall receive, possess, or give to another, any freshly killed migratory birds as a gift, except at the personal abode of the donor or donee, unless such birds have a tag attached, signed by the member who took the birds, stating such member's address, the total number and species of birds and the date such birds were taken.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.11.

§ 5214. Transportation Regulated.

- (a) **Prohibited if taken in violation of sections 5205 - 5212 of this Chapter.** No member shall at any time, by any means, or in any manner, transport any migratory bird of part thereof, taken in violation of any provision of §§ 5205 - 5212 of this Chapter.
- (b) **Transportation of birds of another.** No member shall transport any migratory bird belonging to another person unless such bird is tagged as required by § 5213(f) of this Chapter.
- (c) **Species identification requirement.** No member shall transport any migratory bird unless the head and one fully feathered wing remains attached to each bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or at a migratory bird preservation facility as defined in § 5201(d) of this Chapter.
- (d) **Marking package or container.** No member shall transport by the Postal Service or a common carrier migratory birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.12.

§ 5215. Exportation Regulated.

- (a) **Prohibited if taken in violation of sections 5205 - 5212 of this Chapter.** No member shall at any time, by any means, or in any manner, export or cause to be exported from the United States, any migratory bird or part thereof, taken in violation of any provision of §§ 5205 - 5212 of this Chapter.
- (b) **Species identification requirement.** No member shall export from the United States migratory birds unless the head and one fully feathered wing remains attached to each such bird while being transported from the United States and/or any of its possessions to any foreign country.
- (c) **Marking package or container.** No member shall export migratory birds via the Postal Service or common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.13.

§ 5216. Permit Required.

No member shall hunt migratory birds pursuant to this Chapter without possessing a valid migratory bird hunting permit issued by the Band.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.14.

§ 5217. Closed Areas.

No member shall fail to comply with the closures and other restrictions with respect to wildlife refuges and closed areas as established pursuant to § 4048 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.15.

§ 5218. Authorization for Emergency Closure.

The Commissioner or his or her designee shall close or temporarily suspend any season in any particular locale to migratory bird hunting by Band members upon a determination that a continuation of the season would impact significantly the migratory bird resource. In the case of a temporary suspension, notice shall be provided to members of the date and time when the season may be resumed.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.16.

§ 5219. Enforcement by U.S. Fish and Wildlife Service Personnel.

Any Memorandum of Agreement or other such document by which the Band and the U.S. Fish and Wildlife Service establish the conditions upon which the Service's personnel may enforce the provisions of this Chapter is hereby incorporated into this Chapter as if set forth in its entirety herein.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.17.

§ 5220. Assistance by Non-Members.

No person who is not a member shall assist a member in the hunting of migratory birds pursuant to this Chapter except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.18.

§ 5221. Sale of Migratory Birds Parts Regulated.

- (a) No member shall sell the meat of any migratory bird taken in the Minnesota Ceded Territory.
- (b) A member may use the feathers of migratory birds lawfully harvested under this Chapter for subsistence uses, including the making and selling of handicraft articles as defined in § 4011(r) of this Chapter subject to the following [permit requirements to trace all feathers to be developed].
- (c) Nothing in this Chapter shall be construed to prohibit a member from selling the feathers of migratory waterfowl (ducks, geese, brant and swans) lawfully harvested pursuant to this Chapter for the making of fishing flies, bed pillows, and mattresses, and for similar commercial uses except that:
 - (1) No member shall purchase or sell, or offer to purchase or sell, for millinery or ornamental use the feathers of migratory birds taken in the Minnesota Ceded Territory (except as provided in paragraph (b)); and
 - (2) No member shall purchase or sell, or offer to purchase or sell, mounted specimens of migratory birds taken in the Minnesota Ceded Territory.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 10.19.

SUBCHAPTER 11

AMPHIBIANS, TURTLES, MUSSELS AND CRAYFISH

Section

- 5241. Purpose.
- 5242. Amphibians.
- 5243. Turtles.
- 5244. Mussels.
- 5245. Crayfish.

§ 5241. Purpose.

The purpose of this Subchapter is to regulate the harvest of amphibians, turtles, mussels and crayfish.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 11.01.

§ 5242. Amphibians.

- (a) **Season and Hours.** Frogs may be taken only between May 16 and March 31, inclusive, and between sunrise and sunset, except as otherwise permitted by the Commissioner.
- (b) **Species and Size Limits.** Only leopard frogs (*Rana pipiens*) and bull frogs (*Rana catesbiana*) more than six inches long may be taken or possessed for purposes other than bait. The length of the frog is measured from the tip of the nose to the tip of the hind toes, with the legs fully extended.
- (c) **Methods.**
 - (1) No member shall use cloth screens or similar devices to take frogs.
 - (2) No member shall use artificial lights to take frogs unless in possession of a permit issued by the Department of Natural Resources authorizing the use of artificial lights to take frogs in designated waters.
- (d) **Taking, Importing, Transporting, Possessing, Buying or Selling Frogs for Purposes Other Than Bait.**

- (1) No member shall take, transport, possess, buy or sell frogs for purposes other than bait without a permit issued by the Department of Natural Resources. Such a permit shall be valid for no more than one year without renewal.
- (2) No member shall import live frogs into the State of Minnesota for purposes other than bait without a permit issued by the Commissioner.
- (3) All permittees who take or possess frogs for purposes other than bait must keep a record book that includes the number or weight of each species of frog acquired by taking or purchase and sold, the name and address of each purchaser and seller, and the date of each transaction. These records must be kept current within 48 hours of a transaction.
- (4) All permittees who have taken frogs for purposes other than bait must report activities of the previous permit year, on forms provided by the Department of Natural Resources, before a permit is renewed.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 11.02.

§ 5243. Turtles.

- (a) **Snapping Turtle Limits.** No member shall possess more than three snapping turtles of the species *Chelydra serpentina* without a turtle seller's permit issued under paragraph (c). No member shall take snapping turtles of a size less than ten inches wide including curvature, measured from side to side across the shell at midpoint.
- (b) **Methods.**
 - (1) Except as allowed in paragraph (2), no member shall take turtles by use of explosives, drugs, poisons, lime, other harmful substances, firearms, turtle hooks or traps, or nets other than nets authorized for use in harvesting fish in noncommercial fisheries.
 - (2) A member possessing a turtle seller's permit issued under paragraph (c) may take turtles by means of turtle traps or hooks and other authorized commercial fishing gear.
 - (i) Flexible webbing turtle traps must be of mesh size not less than 3-1/2 inches bar measure or seven inches stretch measure.
 - (ii) Wire turtle traps must be of mesh size not less than 3-1/2 inches bar measure and must have at least four inches on a side and one of the same dimension near the bottom in each of the side panels.

- (iii) A turtle trap must be set in water shallow enough to place the top no deeper than one inch below the water surface. Each trap must be checked and serviced at intervals not exceeding 48 hours.
 - (iv) When in use, each turtle trap must have affixed on it a tag of permanent material visible from above, legibly bearing the name, address, and permit number of the operator. This information must be recorded in an indelible manner on the tag. The tag must be of dimensions not less than 2-1/2 inches in length by five-eighths inch in width.
 - (3) No member shall use artificial lights to take turtles unless in possession of a permit issued by the Department of Natural Resources authorizing the use of artificial lights to take turtles in designated waters.
- (c) **Sales.** Except for subsistence uses, no member shall take, possess, transport or purchase turtles for sale without a turtle seller's permit issued by the Department of Natural Resources. A turtle seller's license is not required to buy turtles for retail sale to consumers:
- (1) at a location licensed by the state department of agriculture or health for sale or preparation of food;
 - (2) of a member licensed by the state department of agriculture or health for sale or preparation of food; or
 - (3) of a member buying turtles at a retail outlet.
- (d) **Records and Reports.**
- (1) Reports must be submitted, on forms provided by the Department of Natural Resources, by a holder of a turtle seller's permit at the time of permit renewal or March 1, whichever comes first. The forms must record the numbers and pounds of turtles taken, species of turtles taken, and other information as specified.
 - (2) A permittee who buys turtles for resale or for processing and resale must keep a correct and complete book record of all transactions and activities covered in the license.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 11.03.

§ 5244. **Mussels.**

- (a) **Season and Hours.** Mussels may be taken only between May 16 and the last day of February, inclusive, and between sunrise and sunset. The Commissioner may restrict the open season for taking mussels for commercial purposes.
- (b) **Prohibited Species.** No member shall harvest or intentionally disturb the Higgins' eye (*Lampsilis higginsii*), elephant ear (*Elliptio crassidens*), ebony shell (*Fusconaia ebena*), winged mapleleaf (*Quadrula fragosa*), fat pocketbook (*Proptera capax*) mussels, or any mussel that is an endangered or threatened species. If these species are located within the harvest site, all harvest operations must immediately stop and the harvester must notify the Department of Natural Resources within 24 hours.
- (c) **Methods and Limits.** Mussels may be taken by hand-picking only with or without aid of breathing apparatus. No member shall take and possess more than 24 live whole or 48 shell halves of freshwater mussels at any time, and no member shall sell mussels except for subsistence uses, unless the member is in possession of a commercial mussel harvesting permit issued under section paragraph (d).
- (d) **Commercial Harvest Permits.**
 - (1) The Commissioner may issue permits to harvest mussels commercially, in areas determined after consultation with the State Department of Natural Resources and in accordance with provisions in the final decree in *Mille Lacs v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding mussel management. Such a permit shall be issued only upon submission of a complete written application containing such information as the Commissioner deems appropriate and shall be valid for no more than one year without renewal. The Commissioner may terminate a permit to harvest mussels pursuant to § 4052 of this Chapter to protect aquatic resources.
 - (2) Only three ridge (*Amblema plicata*) mussels may be harvested under a commercial harvest permit. Additional species may be requested for harvest from specific sites by special permit. Three ridge mussels may lawfully be harvested, as live whole mussels or shell halves, provided that they cannot pass through a 2-3/4 inch diameter hole. A member must return undersized three ridge mussels or unlawful mussel shells, live or dead, to the water immediately.
 - (3) Harvest sites must be identified in the application and permit by legal description or other defining terms sufficient to accurately locate the area. The taking of mussels by a permittee or crew member from a place outside the permitted harvest site is prohibited.

- (4) The permittee must inform the Commissioner 24 hours in advance of any intended mussel harvest operations. Changes in location or dates will require an additional notification.
- (5) A mussel harvesting crew is limited to four persons, including the permittee. Helpers' names must be listed on the permit and must be eligible to exercise hunting, fishing and gathering rights under the 1837 treaty. The permittee must be in attendance at all mussel harvest operations.
- (6) No member shall harvest mussels within 1,000 feet downstream of a dam.

(e) **Records, Reports and Inspections.**

- (1) Notwithstanding the requirements of § 4047 of this Chapter a permittee must keep records of each mussel sales transaction. The records must be verifiable with supporting sales slips and include:
 - (i) pounds of mussels sold;
 - (ii) name and address of the buyer; and
 - (iii) date of transaction.
- (2) Records must be kept current within 48 hours of each transaction. Failure to keep complete and current records may result in immediate revocation of the permit and may render the permittee ineligible for permits for one year. All records must be maintained and available for inspection, at the permittee's address, for three years.
- (3) Notwithstanding the requirements of § 4047 of this Chapter a permittee must submit reports monthly while the permit is valid on forms provided by the Commissioner. Reports must be submitted by the 15th of each month even if no harvest activity took place. All information requested on the report must be provided. Failure to submit information requested on the report may result in revocation of the existing permit and may render the permittee ineligible for permits for one year.
- (4) Records required in this section, business and operation premises, and boats, vehicles, and gear used in the mussel harvesting operations may be inspected at all reasonable times by wardens of the Bands or the Commission.

(f) **Special Restrictions.**

- (1) Meats resulting from the processing of live whole mussels may not be returned to the water or deposited on a shoreline or adjacent land. The meat of mussels lawfully obtained may be used as bait.

- (2) Live mussels may not be transferred within or between bodies of water, except under permit issued by the Commissioner.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 11.04.

§ 5245. Crayfish.

- (a) **Seasons and Size Limits.** Crayfish may be taken only from April 1 through November 30, inclusive. Crayfish less than one inch in length from tip of rostrum to tip of tail must be returned unharmed to the water.
- (b) **Methods.**
 - (1) Crayfish may be harvested with gear allowed for rough fish and minnows in addition to gear specified in this part. Crayfish traps or harvesting devices must be identified in a permanent and legible manner with a plastic or metal tag not smaller than one inch by three inches bearing the user's name and address.
 - (2) The mesh size for crayfish traps may not be less than one-half inch, stretch measure.
 - (3) Floats used to mark traps may not be larger than four inches square or four inches in diameter.
 - (4) Rough fish parts may be used within a crayfish trap as bait.
- (c) **Sale of Crayfish.** All crayfish species may be harvested and crayfish may be cultured for sale for food and processed bait. Crayfish may not be sold for live bait or aquarium use.
- (d) **Tending Crayfish Traps.** Crayfish traps may be lifted from one hour before sunrise until one hour after sunset. Crayfish traps must be lifted at least once in each 24-hour period weather permitting. All trapped fish not lawfully harvested under this Chapter must be returned to the water.
- (e) **Disposal of Crayfish.** Dead crayfish or the shells or meats of crayfish may not be returned to the water or deposited on any shoreline or adjacent area.
- (f) **Transportation and Stocking of Crayfish.** The transportation of any crayfish from one body of water to another within the state is prohibited, except by written permission from the Commissioner.

- (g) **Importation of Crayfish Prohibited.** The placement in waters of the state of any crayfish imported from outside the state is prohibited, except under permit by the Commissioner.

- (h) **Bag and Possession Limit.**
 - (1) No member shall take or possess more than 25 pounds of live, whole freshwater crayfish at any time, unless the member is in possession of a commercial crayfish harvesting permit issued under paragraph (i).
 - (2) No member shall sell crayfish except for subsistence uses unless the member is in possession of a commercial crayfish harvesting permit issued under paragraph (i).

- (i) **Commercial Harvest Permits.**
 - (1) The Commissioner may issue permits to harvest crayfish commercially. Such a permit shall be issued only upon submission of a complete written application containing such information as the Commissioner deems appropriate, and shall be valid for one season or such shorter period of time as the Commissioner deems appropriate.
 - (2) Only members listed on the permit may assist the permit holder in any phase of the crayfish harvesting operations.
 - (3) The Commissioner may revoke any permit upon determination that revocation is necessary for protection of natural resources.
 - (4) Any variance from permit conditions requires a written amendment which must be attached to and become part of the permit.
 - (5) The importation of live crayfish or crayfish eggs into the state is prohibited except by written permit from the Commissioner. Permits to import live crayfish for processing may only be issued provided no live crayfish are allowed to exit the processing facility.
 - (6) Permit holders must keep records of all crayfish sales transactions. Records must be verifiable with supporting sales slips and include the number or weight of all species of crayfish acquired by taking or purchase and sold, name and address of buyer, and date of each transaction. Records must be kept current within 48 hours. Failure to keep complete and current records may result in immediate revocation of the permit and may render the permit holder ineligible for future permits.
 - (7) Crayfish lawfully harvested may be bought, sold, and transported for food purposes and as processed bait only, except as otherwise provided in this

§ 5245. Crayfish must be kept separated from live fish when being transported within the state.

- (8) Crayfish lawfully possessed may be exported for any purpose.
- (9) The permit holder must inform the Commissioner at least 24 hours in advance of the start of harvest operations for each water body. Harvest sites will be identified by name and legal description or other defining terms sufficient to accurately locate the site.
- (10) The permit holder must be in personal attendance at harvest operations and is responsible for all harvest activities. All members of the crew must be listed on the permit.
- (11) The Commissioner may issue a permit to rear or hold crayfish of the species *Orconectes virilis* and *Orconectes immunis* for any waters, including waters that are not isolated from other waters.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 11.06.

SUBCHAPTER 12

WILD PLANT HARVESTING REGULATIONS

Section

5261. Purpose.

5262. Definitions.

5263. Gathering on Certain Public Lands Prohibited.

5264. Gathering on Certain Private Lands Prohibited.

5265. Wild Plant Harvesting Permits.

5266. Restrictions on Wild Plant Gathering – Public Safety.

5267. Sale of Wild Plants Authorized.

5268. Assistance by Non-Band Member.

§ 5261. Purpose.

The purpose of this Subchapter is to regulate the harvest of wild plants, or any parts thereof, which are not regulated pursuant to Subchapter 5 [Wild Rice Harvesting Regulations] of this Chapter

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 12.01.

§ 5262. Definitions.

For the purposes of this Subchapter, the following terms shall be construed to apply as follows:

- (a) **"Fuel wood"** shall mean trees, whether standing or down, that will be used for personal use to produce heat.
- (b) **"Gathering"** means cutting, rooting up, severing, injuring, destroying, removing, or carrying away any wild plant or part thereof.
- (c) **"Ginseng"** means the roots, seeds or other parts of wild American ginseng (Panax quinquefolium or Panax quinquefolius).
- (d) **"Public Landowner"** means any owner or other entity responsible for the management of any public land.
- (e) **"Public lands"** means those lands, including the beds of any streams and flowages, located within the ceded territory owned by the State of Minnesota or any of its political subdivisions or Departments.
- (f) **"Wild plant"** means any undomesticated species, and fruit or part thereof, of the plant kingdom occurring in the natural ecosystem, and includes without limitation endangered or threatened plant species, as defined in § 4011(g) of this Chapter, trees and tree products (such as timber, firewood, fuelwood bark, sap and boughs), and ginseng, but excludes for the purposes of this Chapter wild rice.
- (g) **"Timber"** shall mean trees that will produce products of value, whether standing or down, and includes logs, posts, poles, bolts, pulpwood, cordwood and lumber, but shall not include fuelwood, bark, sap or boughs.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 12.02.

§ 5263. Gathering on Certain Public Lands Prohibited.

No member shall engage in a particular wild plant gathering activity in a particular area on public lands where the public landowner has notified the Commissioner that:

- (a) the particular activity is contrary to the area's general plant management plan or system; or
- (b) the particular area is closed to gathering under the area's general plant management plan or system.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 12.02A.

§ 5264. Gathering on Certain Private Lands Prohibited.

No member shall gather any wild plant on private lands except those lands which are open to the general public for gathering by operation of state law.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 12.02B.

§ 5265. Wild Plant Harvesting Permits.

(a) **Generally.**

- (1) Except as provided in paragraph (d) [Subsistence Uses], a permit issued by the Department of Natural Resources shall be required for the gathering of any wild plant, or any part, fruit, seed or berry thereof.
- (2) The Department of Natural Resources is authorized to issue permits which authorize the gathering of wild plants to a member or group of members in accordance with the provisions of this paragraph (a).
- (3) A gathering permit issued pursuant to this subsection shall:
 - (i) identify the permittee or permittees, including the name, address and Band identification number of all members authorized to gather wild plants by the permit;
 - (ii) identify the amount and general location of the plants, or parts thereof, to be gathered; and
 - (iii) require that all members authorized by the permit must possess an official copy of the permit while engaged in the gathering activity.
- (4) A gathering permit issued pursuant to this subsection may:

- (i) establish limits on the quantity of the plants which may be gathered;
 - (ii) define the specific area or areas where the gathering may occur;
 - (iii) define or limit the methods which may be employed to gather the plants; and
 - (iv) establish such other conditions or requirements deemed necessary or appropriate by the Department of Natural Resources.
- (5) The Department of Natural Resources shall consult the public landowner of the area where the gathering will take place prior to the issuance of a permit under this section.
- (6) No member shall be authorized to engage in the business of harvesting nuisance plants under the authority of this Code.

(b) **Ginseng Gathering Permits.**

- (1) No ginseng gathering permit shall be issued and no member shall gather ginseng from January 1 through August 31.
- (2) A member may not sell, purchase, or possess any green roots of wild ginseng, except during the open season.
- (3) A member may not harvest, dig, or disturb any wild ginseng plant unless the plant has at least three prongs (leaves) with five leaflets each.
- (4) Immediately after digging or removing any wild ginseng plant, the digger must remove all of the seeds from the plant's berries and plant them in the area where the plant was dug. Seeds must be planted by removing surface litter, planting each seed at a depth of one-half inch in the underlying soil, and replacing the surface litter over the planting site.

(c) **Gathering Permits for Trees and Tree Products.**

- (1) No permit shall be issued for and no member shall engage in the commercial harvest of any species of timber except as permitted by state law.
- (2) Except as provided in paragraph (c)(1), and subject to the provisions of paragraph (c)(3), the Department of Natural Resources may issue a permit to a member or group of members for the gathering of trees or tree products. Any such permit shall be issued in accordance with paragraphs (a)(3) and (4).
- (3) Except for a permit to gather bark, the Department of Natural Resources shall not issue a permit for the gathering of trees or tree products until the

Department receives the written consent of the public landowner of the lands covered by the permit.

- (d) **Subsistence Uses.** Except as required by paragraphs (b) and (c), no permit shall be required for a member to gather wild plants for subsistence uses.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 12.03.

§ 5266. Restrictions on Wild Plant Gathering – Public Safety.

No member engaged in the gathering of wild plants pursuant to this Subchapter shall impair or obstruct developed recreational trails or special use areas and any wild plant subject to the gathering which may impede or impair the use of those trails or areas shall be removed immediately.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 12.04.

§ 5267. Sale of Wild Plants Authorized.

- (a) Except as provided in § 5265(c)(1) of this Chapter, nothing contained in this Chapter shall be construed to prohibit members from selling any wild plant, or any part thereof, lawfully harvested pursuant to this Subchapter.
- (b) Except with the respect to the sale of ginseng, the provisions of § 4047 [Records of Commercial Transactions Required] of this Chapter shall not apply to the sale of any wild plant, or part thereof, lawfully harvested pursuant to this Subchapter.
- (c) In addition to such other information that is required by § 4040 of this Chapter, no member shall fail to specify the county of ginseng harvest on the record of a commercial transaction.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 12.05.

§ 5268. Assistance by Non-Band Member.

No person who is not a member shall assist a member in the gathering of any wild plant, or part thereof, pursuant to this Subchapter except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-97, § 12.06.

TITLE 12 - HOUSING

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CHAPTER 1

HOUSING DEPARTMENT

Section

1. Purpose and Findings.
2. Definitions.
3. Housing Department.
4. Executive Director.
5. Housing Board.
6. Board Member Selection Process.
7. Process to Fill Vacant Board Positions.
8. Officers.
9. Meetings.
10. Quorum.
11. Removal of Board Members.
12. Housing Board Bylaws.
13. Transfer of Ownership Interests.

Historical and Statutory Notes

The Title of Band Ordinance 18-04 (this Chapter) is “An ordinance to amend 11-01-14-04 (Housing) to delete any and all references to the Housing Department as a Tribally Designated Housing Entity

(“TDHE”). Bill 11-01-14-04 repealed 12 MLBS §§ 1-33 and established a new Government structure known as the “Housing Department” to administer the Mille Lacs Band of Ojibwe Indians Housing programs.”

The Preamble to and Sections 101.1 and 115 of Band Ordinance 18-04 (this Chapter) provide:

Preamble: “This Ordinance shall establish a new structure for the administration of the Band’s Housing programs and shall be cited hereafter as the „Fair and Equitable Housing Act.”

§ 101.1: “This Ordinance repeals and replaces in its entirety 12 MLBS §§ 1-33 (Housing) and amends 13 MLBS § 1001 (Powers and duties of the Commissioner of Community Development).”

§ 115: “Nothing contained in this Ordinance shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.”

The Title of Band Ordinance 27-04 is “An Ordinance to amend 11-01-18-04 (Housing) in order to correct language regarding the nomination and confirmation of Board Members.”

The Preamble to Band Ordinance 27-04 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purposes of correcting language in the Housing Department Bill so as to reflect the process for the confirmation of Board Members.”

§ 1. Purposes and Findings.

- (a) There are currently a duplication of housing programs and services available to Band members and the Band Assembly recognizes a need to coordinate the housing programs to maximize the resources of the Band.
- (b) To eliminate the duplication of housing programs, a new structure known as the “Housing Department” will be administered under the direction of the Commissioner of Community Development.
- (c) To assist the Commissioner of Community Development with the scope of this task, there is a need to create a new position known as the “Executive Director of the Housing Department.” The Executive Director will be responsible for the daily administration of the Housing Department’s programs and services. The Executive Director shall report directly to the Commissioner of Community Development.
- (d) To accommodate the new housing structure, a newly created Housing Board will work in partnership with the Commissioner of Community Development and the Executive Director to ensure that long-term housing needs are clearly identified through the implementation of Strategic Planning.

- (e) The Band Assembly also recognizes that a new process must be established to continually assess and manage the housing needs as the demographics of the Band change.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, §§ 101.2-6.

§ 2. Definitions.

- (a) **Band** means the Mille Lacs Band of Ojibwe Indians.
- (b) **Band Assembly** means the legislative branch of the Mille Lacs Band of Ojibwe Indians.
- (c) **Band Member** means an enrolled person of the Mille Lacs Band of Ojibwe Indians.
- (d) **Executive Director** means the person responsible for the daily administration of the Housing Department who shall report directly to the Commissioner of Community Development.
- (e) **Commissioner of Community Development** means an appointed official of the Executive Branch who is responsible for the administration, management, supervision and coordination activities for Community Development, Public Works, Facilities Management, Transportation and the Housing Department.
- (f) **Housing Board** means the advisory board that works in partnership with the Commissioner of Community Development and the Executive Director of the Housing Department.
- (g) **Housing Department** means the structure created by statute to be responsible for new construction, renovations, residential land acquisition, residential services, maintenance, the Home Loan program and transitional housing.
- (h) **Misconduct** means a dereliction of duty, unlawful behavior, misdeed, impropriety, mismanagement, unfair treatment, or conduct that shows willful or wanton disregard of any Band member's right to housing.
- (i) **Service Area** means the area designated to receive housing services as enacted in Band Assembly Bill 10-04-40-03 or as otherwise amended by the Band Assembly.

- (j) **Strategic Housing Plan** means the housing plan developed by the Commissioner of Community Development including but not limited to goals and objectives and an overview of the planned activities for the period.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 102.

§ 3. Housing Department.

- (a) A new structure known as the Housing Department is hereby established to administer the Mille Lacs Band of Ojibwe Indians housing programs and services.
- (b) The Housing Department shall be under the supervision of the Commissioner of Community Development.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 103.

§ 4. Executive Director.

A position known as the Executive Director of the Housing Department is hereby created. This position shall be responsible for the daily administration of housing programs and services to Band members. The Executive Director shall report directly to the Commissioner of Community Development.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 104.

§ 5. Housing Board.

- (a) No more than ninety (90) days after passage of this Chapter, a newly formed Housing Board shall be created to act in an advisory capacity to assist the Housing Department and Commissioner of Community Development with housing matters and such Board shall have those powers as delegated in sub-section (b) of this section.

(b) Powers and Duties.

- (1) To advise the Commissioner of Community Development and make recommendations on various housing matters relating to the Band's Housing vision and mission.
- (2) To acknowledge Band members' housing needs and communicate concerns to the Executive Director of the Housing Department.
- (3) To approve an annual Strategic Housing Plan with ratification by the Band Assembly.
- (4) To ensure that the Housing Policies conform to the Band's Housing vision and mission and that Community Development and the Housing Department comply with the Housing Policies.
- (5) To maintain a fair and equitable service level to all Band members.
- (6) To approve home loans, renovation loans or other housing program loans that may be developed by the Housing Department.
- (7) To approve foreclosures in circumstances where a mortgagor defaults on their housing loan for a period of more than six (6) months.
- (8) To approve new Housing programs and Housing Policies developed by the Housing Department with ratification by the Band Assembly.
- (9) To approve Housing Meeting Minutes from the previous meeting and forward a copy to Band Assembly within ten (10) business days.
- (10) To approve any housing grants if such regulations require it.
- (11) To approve the quarterly reports developed by the Commissioner of Community Development and the Housing Department.
- (12) To maintain confidentiality of all housing client matters.
- (13) To treat all Band members fairly and equally without regard to family relationships.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 105.

§ 6. Board Member Selection Process.

- (a) This section establishes the rules for selection of Housing Board members, the number of Board members to be appointed and the term length of each Board member. The rules are as follows:
- (1) The Housing Board is hereby organized and designated as a subdivision of the Housing Department of the Mille Lacs Band of Ojibwe Indians.
 - (2) The Housing Board shall be composed of seven (7) persons.
 - (3) Each Housing Board member must be an enrolled Band member of the Mille Lacs Band of Ojibwe Indians and at least eighteen (18) years of age.
 - (4) No person shall be barred from serving on the Board because he or she is a tenant or homebuyer. However, such Board member shall not participate in or be present at any portion of a meeting concerning any matter that involves his or her individual rights, obligations or status as a tenant or homebuyer.
 - (5) The Chief Executive shall select two (2) individuals and the Speaker of the Assembly shall nominate one (1) of the two to the Band Assembly for confirmation to the Housing Board. This Housing Board member shall serve until June 30, 2007. Thereafter, this position shall be eligible for appointment to a four (4) year term beginning on June 30, 2007.
 - (6) The Speaker of the Assembly shall select two (2) Elders and the Chief Executive shall nominate one of the two to the Band Assembly for confirmation to the Housing Board. This Housing Board member shall serve until June 30, 2006. Thereafter, this position shall be eligible for appointment to a four (4) year term beginning on June 30, 2006.
 - (7) The District I Representative shall select two (2) individuals and the Chief Executive shall nominate one of the two to the Band Assembly for confirmation to the Housing Board. This Board Member shall serve until June 30, 2007. Thereafter, this position shall be eligible for appointment to a four (4) year term beginning on June 30, 2007.
 - (8) The District II Representative shall select two (2) individuals and the Chief Executive shall nominate one of the two to the Band Assembly for confirmation to the Housing Board. This Board Member shall serve until June 30, 2006. Thereafter, this position shall be eligible for appointment to a four (4) year term beginning on June 30, 2006.
 - (9) The District III Representative shall select two (2) individuals and the Chief Executive shall nominate one of the two to the Band Assembly for

confirmation to the Housing Board. This Board Member shall serve until June 30, 2006. Thereafter, this position shall be eligible for appointment to a four (4) year term beginning on June 30, 2006.

- (10) The Chief Executive and the Speaker of the Assembly shall each select two (2) persons from the at Large area and the Band Assembly shall confirm two (2) of the four (4) for appointment to the Housing Board. These Board members shall serve until June 30, 2005. Thereafter, these positions shall be eligible for appointment to a four (4) year term beginning on June 30, 2005.
- (b) The nomination process established in this subsection shall apply to all future nominees who hold this position.
- (c) If, for any reason, an elected official does not nominate a person in the manner set out hereinabove, that position shall be filled by nomination by the Chief Executive and Speaker of the Assembly. The Chief Executive and Speaker of the Assembly shall each nominate one (1) person from the pool where the vacancy occurs and the Band Assembly shall confirm one (1) person.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 106.

Band Ordinance 27-04, § 106.

Cross References

Recall of appointed officers, *see* 4 MLBS § 15.

§ 7. Process to Fill Vacant Board Positions.

- (a) If, for any reason, a Board position becomes vacant, the elected official that originally nominated that person shall nominate a new person in the same manner to replace the vacant position for the remainder of that term. Thereafter, this position shall be filled in the manner set out above.
- (b) If, for any reason, the elected official does not nominate a person within thirty (30) days of the vacancy, that position shall be filled by nomination by the Chief Executive and Speaker of the Assembly. The Chief Executive and Speaker of the Assembly shall each nominate one (1) person from the pool where the vacancy occurs and the Band Assembly shall confirm one (1) person.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 107.

§ 8. Officers.

- (a) The Housing Board shall select from its members one person to serve as Chairperson of the Board, one person to serve as Vice-Chairperson, and one person to serve as Secretary. In the absence of the Chairperson, the Vice-Chairperson shall preside over the meeting. In the absence of the Chairperson and Vice-Chairperson, the Secretary shall preside. The Secretary shall keep a complete and accurate record of all meetings and any actions taken by the Board.
- (b) These offices shall be held for a two-year period beginning on June 30, 2004.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 108.

§ 9. Meetings.

- (a) The Housing Board shall meet at least one (1) time per month to attend to Housing Department business. If any Housing Board member is absent from three (3) consecutive meetings, they shall be removed from the Housing Board.
- (b) The Housing Board members shall be paid a stipend for their services, but payment of such stipend shall be limited to two (2) meetings per month. If more than two meetings within a month are required to handle housing business, no stipend shall be paid although mileage expenses will be allowed.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 109.

§ 10. Quorum.

A majority of the full Board, notwithstanding the existence of any vacancies, shall constitute a quorum for the transaction of business. No formal Board action shall be taken by a vote of less than a majority. A quorum is defined as four (4) members.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 110.

§ 11. Removal of Board Members.

- (a) A member of the Housing Board may be removed for misconduct of office, absence from three (3) consecutive meetings without cause, or neglect of duty, but only after notice and hearing before the Joint Session. The Commissioner of Community Development and the Executive Director shall submit in writing such reason for removal and submit the same to the Joint Session. The Joint Session shall hear the case and determine if valid reason exist to remove such Board member.
- (b) The Board Member shall receive such notice of removal hearing at least ten (10) days prior to the hearing date.
- (c) At any such hearing, the Board Member is entitled to be heard in person or through an attorney and to present witnesses on his or her behalf.
- (d) A confidential record of any such hearing shall be kept for a period of seven (7) years.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 111.

§ 12. Housing Board Bylaws.

The Housing Board shall operate according to bylaws established by them and the Commissioner of Community Development. The bylaws shall contain any operational requirements in order for the Board to carry out its powers and duties.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 112.

§ 13. Transfer of Ownership Interests.

- (a) All units owned by the Mille Lacs Band of Ojibwe Indians “Housing Authority” shall be transferred to the Mille Lacs Band of Ojibwe Indians “Housing Department.”
- (b) All leases held by the Mille Lacs Band of Ojibwe Indians “Housing Authority” shall be transferred to the Mille Lacs Band of Ojibwe Indians “Housing Department.”
- (c) Any land acquisition performed by the Mille Lacs Band of Ojibwe Indians Department of Natural Resources (“DNR”) that includes a house shall be leased to the Housing Department according to the following limitations:
 - (1) restricted to residential use; and
 - (2) follow the area zoning requirements for a residential dwelling.

Historical and Statutory Notes

Source:

Band Ordinance 18-04, § 113.

CHAPTER 2

NATIVE AMERICAN VETERAN DIRECT LOAN PROGRAM

Section

- 101. Findings and Determinations.**
- 102. Application of Chapter.**
- 103. Purpose to Provide Additional Remedies.**
- 104. Public Policy of Band.**
- 105. Definitions.**
- 106. Priority.**
- 107. Recording System.**
- 108. Filing.**
- 109. Log.**
- 110. Public Inspection and Copying.**
- 111. Leasehold Mortgage Foreclosure Proceedings.**
- 112. Service of Process and Procedures.**
- 113. Cure of Default.**
- 114. Entry of Judgment.**
- 115. Unlawful Detainer.**
- 116. Procedures for Service of Notice.**

- 117. Complaint and Summons.**
- 118. Service of Summons and Complaint.**
- 119. Writ of Restitution.**
- 120. Judgment.**
- 121. Continuance in Cases Involving Secretary.**
- 122. Enforcement.**

Historical and Statutory Notes

The Preamble of Ordinances 34-94 and 01-95 provide:

"The purpose of this act is to promote the general welfare of the Band by allowing for or increase in available housing. This act is intended to aid Mille Lacs Band Veterans in processing financing for the construction or purchase of single family residences on Trust lands within the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe Indians.

Ordinance 34-94 and Ordinance 01-95, §§ 15 to 17 provide:

"Section 15. Reservation of Right. The Band Assembly hereby fully reserves the right to alter, amend or repeal the provisions of the Chapter, and all rights and privileges granted or extended thereunder shall be subject to such right.

"Section 16. Sovereign Immunity. Nothing contained herein shall be construed as a waiver of sovereign immunity by the Mille Lacs Band of Ojibwe.

"Section 17. Severability. The Solicitor General or exterior legal counsel and the Court of Central Jurisdiction whichever is applicable, shall liberally construe the provisions of this Act so as to provide for the full force and effect of the purposes therein stated.

"Section 17.01. If any provisions of the Band Statute, or the application thereof, to any person, business corporation or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid provisions or application and to this end, the provisions of this Band Statute are declared severable."

Cross References

Real estate mortgages, *see* 24 MLBS § 401.

§ 101. Findings and Determinations.

- (a) The Band Assembly hereby finds and determines that there is a history of inadequate housing for Band members and that adequate housing and related services are vital to the health and well-being of all members of the Band.

- (b) The Band Assembly hereby finds and determines that our Armed Service veterans made great sacrifices for our country, their communities and their families and are a valuable resources to the Band and that our veterans should have adequate housing and related services made available to them.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 1.
Band Ordinance 01-95, § 1.

§ 102. Application of Chapter.

This chapter prescribes procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by the United States Department of Veterans Affairs under the Native American Veterans Direct Loan Program under Title 38 U.S.C. 3761.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 1.02.
Band Ordinance 01-95, § 1.02.

§ 103. Purpose to Provide Additional Remedies.

The purpose of this chapter is to provide remedies for the Veterans Affairs Loan Program and nothing herein contained shall alter the ultimate financial liability of the owner of tenant for repairs or maintenance of any building located on lands under the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 19.
Band Ordinance 01-95, § 19.

§ 104. Public Policy of Band.

Any provisions, whether oral or written, of any lease or other agreement whereby any provisions of this chapter are waived by a tenant is contrary to public policy and void.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 18.
Band Ordinance 01-95, § 18.

§ 105. Definitions.

- (a) **"Band"** shall refer to the Non-Removable Mille Lacs Band of the Mille Lacs Indian Reservation as defined in the Minnesota Chippewa Tribal Constitution and the statutes of the Non-Removable Mille Lacs Band.
- (b) **"Lease"** shall mean the lease of trust property for which a Leasehold Mortgage, as defined in this section, has or will be given.
- (c) **"Leasehold Mortgage"** shall mean the mortgage of a lease of trust property given to secure a loan made under the VA Native American Direct Loan Program and 38 U.S.C. 3761 et seq.
- (d) **"Leasehold Mortgage Foreclosure Proceeding"** shall mean a proceeding in the Court of Central Jurisdiction:
 - (1) To foreclose the interest of the Mortgagor(s), and each person or entity claiming through the Mortgagor(s), in a Lease for which a Mortgage has been given under the VA Native American Direct Loan Program and 38 U.S.C. 3761 et seq.; and
 - (2) To assign such Lease to the Secretary or the Secretary's assignee.
- (e) **"Lessor"** shall mean the beneficial or equitable owner of trust or otherwise restricted property under a Lease for which a Mortgage, as defined in this section, has been given, or the heir(s), successor(s), executor(s), administrator(s), or assign(s) of such Lessor.
- (f) **"Mortgagee"** shall mean the mortgagee under any Leasehold Mortgage as defined in this section or the successor(s) interest of any such mortgagee, including the Secretary as defined in this section, or the Secretary's assignee under any such mortgage.
- (g) **"Mortgagor"** shall mean any Mille Lacs Band member who has executed a Leasehold Mortgage as defined in this section, or any member heir(s), successor(s), executor(s), administrator(s) or assign(s) of the Mille Lacs Band or any member.
- (h) **"Nuisance"** shall mean the maintenance on real property of a condition which:

- (1) Unreasonably threatens the health or safety of the public or neighboring land users; or
 - (2) Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.
- (i) **"Recording Clerk"** shall mean the person designated by the Mille Lacs Band to perform the recording functions required by this chapter or any deputy or designee of such person.
 - (j) **"Secretary"** shall mean the Secretary of the United States Department of Veterans Affairs (VA) or designee.
 - (k) **"Subordinate Lienholder"** shall mean the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this chapter (except the Mille Lacs Band with respect to a claim for a tribal leasehold tax).
 - (l) **"Tenant"** shall mean any person who occupies real property under a lease, rental agreement or other agreement with a lessor as defined in this section.
 - (m) **"Tribal Court"** shall mean the Court of Central Jurisdiction as established by the laws of Mille Lacs Band of Ojibwe to exercise the powers and functions of a court of law.
 - (n) **"Unlawful Detainer Action"** shall be a suit brought before the Court of Central Jurisdiction to terminate a tenant's interest in real property and/or to evict any person from occupancy of real property.
 - (o) **"Waste"** is spoil or destruction by a tenant of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor's interest in the property.
 - (p) **"Writ of Restitution"** is an order of the Tribal Court:
 - (i) Restoring an owner or lessor or the Secretary to possession of real property and,
 - (ii) Evicting a tenant or other occupant therefrom.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, §§ 1.03-1.18.
 Band Ordinance 01-95, §§ 1.03-1.18.

§ 106. Priority.

A Leasehold Mortgage recorded in accordance with the recording procedures set forth in this chapter shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage. Nothing in this chapter shall prevent any person or entity from recording a Leasehold Mortgage in accordance with State law or from filing a Leasehold Mortgage with the Bureau of Indian Affairs.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 2.
Band Ordinance 01-95, § 2.

§ 107. Recording System.

The Band Recording Clerk shall maintain in the Department of Natural Resources Real Estate Division a system for the recording of leasehold Mortgages and such other documents as the Band may designate by law or resolution.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 3.
Band Ordinance 01-95, § 3.

§ 108. Filing.

- (a) The Band Recording Clerk shall endorse upon any Leasehold Mortgage or other document received for recording:
 - (1) The date and time of receipt of the Leasehold Mortgage or other document;
and
 - (2) The filing number, to be assigned by the Recording Clerk, which shall be a unique number for each Leasehold Mortgage or other document received; and
 - (3) The name of the Band Recording Clerk receiving the Leasehold Mortgage or document.

(b)

- (1) Upon completion of the above endorsements; the Tribal Recording Clerk shall make a true and correct copy of the Leasehold Mortgage or other document and shall certify the copy as follows:

MILLE LACS BAND OF OJIBWE

MILLE LACS RESERVATION: ss.

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____ . (SEAL)

Signature

Title

- (2) The Band Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the Leasehold Mortgage or other document to the person or entity that presented the same for recording.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, §§ 3.01-3.03.

Band Ordinance 01-95, §§ 3.01-3.03.

§ 109. Log.

The Band Recording Clerk shall also maintain a log of each Leasehold Mortgage or other document recorded in which there shall be entered:

- (a) The name(s) of the Mortgagor(s) of each Leasehold Mortgage, identified as such;
- (b) The name(s) of the Mortgagee(s) of each Leasehold Mortgage, identified as such;
- (c) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents;

- (d) The date and time of receipt;
- (e) The filing number assigned by the Band Recording Clerk; and
- (f) The name of the Band Recording Clerk receiving the Leasehold Mortgage or document.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 3.04.

Band Ordinance 01-95, § 3.04.

§ 110. Public Inspection and Copying.

The certified copies of the Leasehold Mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 3.05.

Band Ordinance 01-95, § 3.05.

§ 111. Leasehold Mortgage Foreclosure Proceedings.

Upon the default of the Mortgagor(s) under a Leasehold Mortgage, the Secretary may commence a Leasehold Mortgage foreclosure proceeding in the Tribal Court by filing:

- (a) A verified complaint:
 - (1) Naming the Mortgagee(s) and each person or entity claiming through the Mortgage(s) subsequent to the recording of the Leasehold Mortgage, including each Subordinate Lienholder (except the Band with respect to a claim for a tribal leasehold tax), as a defendant;
 - (2) Describing the property;
 - (3) Stating the facts concerning the execution of the Lease and the Leasehold Mortgage; the facts concerning the recording of the Leasehold Mortgage; the facts concerning the alleged default(s) of the Mortgagor(s); and such other facts as may be necessary to constitute a cause of action;

- (4) Having appended as exhibits true and correct copies of each promissory note, Lease, Leasehold Mortgage, or assignment thereof relating to the property; and
 - (5) Including an allegation that all relevant requirements and conditions prescribed in (i) title 38 U.S.C. § 3761, (ii) the regulations promulgated thereunder by the Secretary, and (iii) the provisions of the Lease, have, been complied with by the Secretary.
- (b) A summons, issued as in other cases, requiring the Mortgagor(s) and each other defendant to appear for a trial upon the complaint on a date and time specified in the summons.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 4.
Band Ordinance 01-95, § 4.

§ 112. Service of Process and Procedures.

The laws of the Band governing service of process and all other matters relating to the conduct of Court of Central Jurisdiction proceedings shall apply to any Leasehold Mortgage Foreclosure Proceeding pursuant to this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 5.
Band Ordinance 01-95, § 5.

Cross References

Procedure, judicial proceedings, *see* 24 MLBS § 2001.
Real estate mortgages, *see* 21 MLBS § 401.

§ 113. Cure of Default.

Prior to the entry of a judgment of foreclosure, any Mortgagor or any Subordinate Lienholder may cure the default(s) under the Leasehold Mortgage. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the Leasehold Mortgage.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 6.
Band Ordinance 01-95, § 6.

§ 114. Entry of Judgment.

If the alleged default(s) have not been cured, and if the Court should find for the Secretary, the Court of Central Jurisdiction shall enter judgment:

- (a) Foreclosing the interest in the Lease of the Mortgagor(s) and each other defendant named in the complaint upon whom proper and timely service has been made, including each such Subordinate Lienholder; and
- (b) Assigning such Lease to the Secretary or the Secretary's assignee.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 7.
Band Ordinance 01-95, § 7.

§ 115. Unlawful Detainer.

- (a) The provisions of this section shall apply to all persons and property subject to the governing authority of the Mille Lacs Band as established by the Laws of the Non-Removable Mille Lacs Band.
- (b) A tenant or other occupier of land shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under any of the following situations:
 - (1) Without the requirement of any notice:
 - (i) After the expiration of the term of the lease or other agreement; or
 - (ii) If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim of a lease or title of the property; or
 - (iii) After the Mille Lacs Housing Authority has terminated such person's tenancy pursuant to procedures providing such person a hearing before the Housing Authority involved; or

- (iv) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.
- (2) After having received 30 days' notice, the tenant or occupier shall remain in possession of the property contrary to the terms of the notice as follows:
 - (i) When such person has received notice:
 - (A) That he or she is in default in the payment of rent; and
 - (B) Requiring him or her, to either pay the rent or surrender possession of the occupied property; and such person has remained in possession after receipt of such notice without either surrendering possession of the property or paying the rent; or
 - (ii) When the lease of the property is for an indefinite time, with rent to be paid monthly or by some other period, and the lessor has given notice of termination of the tenancy at least 30 days prior to the end of such month or period; or
 - (iii) When such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to surrender the property; or
 - (iv) When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property after having been given notice, to either cease such waste or maintenance of nuisance or to surrender the property.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 8.

Band Ordinance 01-95, § 8.

Cross References

Forcible entry and unlawful detainer, *see* 21 MLBS § 301.

Personal jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 113.

§ 116. Procedures for Service of Notice.

- (a) Notices required or authorized in 12 MLBS § 115 shall be given in writing by either:

- (1) Delivering a copy personally to the tenant or occupier or to any adult members of his or her family residing on the premises; or
 - (2) Posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the tenant or occupier by certified mail, return receipt requested, properly addressed, postage prepaid.
- (b) Proof of service by either of the above methods may be made by affidavit of any adult person stating that he or she has complied fully with the requirements of either of these two methods of service.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 9.
Band Ordinance 01-95, § 9.

§ 117. Complaint and Summons.

The owner of real property or lessor or Secretary shall commence an action for unlawful detainer by filing with the Court, in writing, the following documents:

- (a) A complaint, signed by the owner, lessor, the Secretary, an agent, or attorney, stating:
 - (1) The facts on which he or she seeks to recover,
 - (2) Describing the property so that it can be identified with reasonable certainty; and
 - (3) Any claims for damages or compensation due from the persons to be evicted;
- (b) A summons, issued as in other cases, requiring the defendants to appear for trial upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall not be less than 20 nor more than 30 days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file with the court an answer and appear for trial at the time, date and place specified in the summons.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 10.
Band Ordinance 01-95, § 10.

§ 118. Service of Summons and Complaint.

A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Mille Lacs Band Statute for service of process in civil matters.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 11.

Band Ordinance 01-95, § 11.

§ 119. Writ of Restitution.

The Court of Central Jurisdiction shall enter a Writ of Restitution if:

- (a) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this document; and
- (b) The Court of Central Jurisdiction shall find that the occupier of the real property is guilty of an act of unlawful detainer.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 12.

Band Ordinance 01-95, § 12.

§ 120. Judgment.

- (a) Upon issuance of a Writ of Restitution the Court of Central Jurisdiction shall have the authority to enter against the defendants a judgment for the following:
 - (1) back rent,
 - (2) unpaid utilities,
 - (3) charges due the Band, Indian Housing Authority, or land owner under any lease or occupancy agreement (not including a leasehold mortgage); and
 - (4) damages caused by the defendants to the property other than ordinary wear and tear.
- (b) The Court of Central Jurisdiction shall have the authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 12.021.
Band Ordinance 01-95, § 12.021.

§ 121. Continuance in Cases Involving Secretary.

Except by agreement of all parties, there shall be no continuances in the cases involving the Secretary which will interfere with the requirement that the Writ of Restitution in a case involving the Secretary be enforced not later than 60 days from the date of service of the summons and complaint.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 13.
Band Ordinance 01-95, § 13.

§ 122. Enforcement.

Upon issuance of a Writ of Restitution by the Court of Central Jurisdiction law enforcement officers shall enforce the Writ of Restitution by evicting the defendants and their property from the premises which are unlawfully occupied. In all cases involving the Secretary, the Writ of Restitution shall be enforced not later than 60 days after the date of service of the summons and complaint.

Historical and Statutory Notes

Source:

Band Ordinance 34-94, § 14.
Band Ordinance 01-95, § 14.

TITLE 13 - UTILITIES

Chapter

- 1. Public Works Commission**
- 2. Commissioner of Community Development**

Section

1
1001

CHAPTER 1

PUBLIC WORKS COMMISSION

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	1
2. Bylaws	101
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Historical and Statutory Notes

The Preamble of Band Statute 1233-MLC-20 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians to adopt the following provisions as Chapter 20-Public Works Commission Act to revise, restate and replace the former Chapter 20, 1010-MLC-20, which is hereby repealed."

Band Statute 1233-MLC-20, T.I., § 11 provides: "Section 11. Severability. If any provision of this Chapter or its application to any person or set of circumstances is held invalid, the remainder of the Chapter or its application to other persons or circumstances shall not be affected."

SUBCHAPTER 2

GENERAL PROVISIONS

- Section
1. Charter.
 2. Board of Supervisors.
 3. Regulation and Maintenance of Utilities.
 4. Construction and Operation of Utilities.
 5. Licenses and Permits.
 6. Bylaws.
 7. Public Works Association.
 8. Rates, Charges, and Fees.
 9. Failure to Submit Payment.
 10. Employees.
 11. Service Contracts.
 12. Obligations.
 13. Vesting of Property Upon Dissolution.
 14. Uniform System of Records and Accounting.
 15. Administrative Regulations.
 16. Meetings.

Cross References

Solid waste, responsibility of Commission, *see* 11 MLBS § 1017.

§ 1. Charter.

- (a) A commission to be known as the Mille Lacs Band of Ojibwe Public Works Commission is hereby chartered within the Executive Branch of Band Government. The Public Works Commission shall have the powers enumerated within this Chapter and as expressly delegated by the Band Assembly. The Commission shall be within the subject matter jurisdiction of the Commissioner of Community Development.
- (b) The Commission shall be a body politic which is an instrumentality of the Mille Lacs Band of Chippewa Indians with the right to initiate, and defend the Commission in, any legal action before any court of competent jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., §§ 1, 2.
Band Ordinance 20-97, § 3.

§ 2. Board of Supervisors.

- (a) The governing body of the Public Works Commission shall be a five member Board of Supervisors, with each member having the title of Supervisor and one vote at regular and special meetings. The Board shall ensure accurate record keeping of all meetings and all transcripts thereof. Such records shall be prima facie evidence of the facts therein stated.
- (b) The Public Works Administrator shall be the Chair of the Board of Supervisors and ensure the lawful operation of the Commission. The Director of Operations for Public Works shall also be a member of the Board. The Chief Executive shall nominate three individuals from the Band membership as Supervisors who shall be confirmed by the Band Assembly. The terms of office shall be perpetual.
- (c) Any Supervisor may be removed from office for just cause as determined by 4 MLBS § 15(g).
- (d) In exercising any powers granted in this chapter, no Supervisor shall be immune from any liability which arises from the willful, knowledgeable and unacceptable performance of their duties.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, TI, §§ 1.01-1.03, 2.

Cross References

Appointment and terms of Board, Bylaws, *see* 13 MLBS § 107.

Removal from office, Bylaws, *see* 13 MLBS § 112.

Vacancy in office of Chair, *see* 13 MLBS § 114.

§ 3. Regulation and Maintenance of Utilities.

The Public Works Commission shall have the power to regulate and maintain Band-owned and operated utilities. The Commission shall have jurisdiction over any and all matters pertaining to such utilities.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.

Cross References

Bylaws, management of Commission business and affairs, *see* 13 MLBS § 106.

§ 4. Construction and Operation of Utilities.

The Commission shall have the power, subject to Band Assembly approval, to construct, own and operate facilities for the provision of utility services. This authority includes the power to enter into any and all related contracts and agreements.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.01.

§ 5. Licenses and Permits.

The Commission shall have the power to issue licenses and permits in connection with the operation and maintenance of utility facilities and to establish fees for such licenses or permits. The issuance of a license or permit by the Public Works Commission does not exempt any person or vendor from any other provisions of the Mille Lacs Band Statutes Annotated requiring procurement of licenses or permits.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.02.

§ 6. Bylaws.

The Commission shall adopt a set of Bylaws, which shall be distributed to the membership of the Commission. A copy of the Bylaws shall be available for inspection by the membership of the Association at each office of the Commission.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20. T.I. § 2.03.

Cross References

Bylaws, *see* 13 MLBS § 101 et seq.

§ 7. Public Works Association.

The Commission shall have the power to establish membership in the Mille Lacs Band of Chippewa Indians-Public Works Association. Each person who resides on trust, allotted or private property within the jurisdiction of the Band shall enroll in the Association.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.04.

§ 8. Rates, Charges, and Fees.

The Commission shall have the power to establish and collect rates, charges and fees for the services provided by the Commission in the manner prescribed by its Bylaws.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.05.

Cross References

Rates and charges, bylaws, *see* 13 MLBS § 118.

§ 9. Failure to Submit Payment.

The Commission shall have the power to withhold service from any person who fails to submit payment for any fee legally established.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.06.

§ 10. Employees.

The Commission shall have the power to employ qualified individuals, who shall be employees of the Band.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.07.

Cross References

Government employees, *see* 6 MLBS § 1.

§ 11. Service Contracts.

The Commission shall have the power to contract in writing with individuals for service to any utility facility provided sufficient funds for payment for such service exist.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.08.

§ 12. Obligations.

- (a) Subject to the limitations set forth in this section, the Commission shall have the authority to borrow money and incur indebtedness by issuing obligations, in its own name or in the name of and on behalf of the Mille Lacs Band of Chippewa Indians, for purposes of acquiring, constructing, maintaining, managing and improving utility systems on all property within the territorial jurisdiction of the Band consistent with the purposes of the Commission. Such obligations shall be issued and sold in the manner, amount and form and shall bear interest at the rate or rates set by the

Commission. Each such obligation must be approved by the Band Assembly prior to its issuance.

- (b) All such obligations shall be payable solely:
 - (1) from revenues, income, receipts and profits derived by the commission from its operation and management of utility systems for the Band;
 - (2) from the proceeds of evidences of indebtedness issued and sold by the Commission which are payable solely from such revenues, income, receipts and profits; or
 - (3) from federal or state grants or other money received by the Commission which are available therefor.
- (c) The Commission may pledge to the repayment of any such obligations, and the interest coming due thereon, any or all of the sources set forth in subsection (b), but is without power to pledge or encumber any other revenues, income or assets of the Mille Lacs Band of Chippewa Indians, or any other organization or instrumentality of the Band for the repayment of such obligations. The Band Assembly may, if deemed to be in the best interests of the Band to do so, pledge to the payment of any such obligations, or authorize any organization or instrumentality of the Band to pledge to the payment of such obligations, such specific revenues, income or assets of the Band or such organization or instrumentality as it may deem appropriate. In any event, no such obligations shall be payable from, nor be a charge upon, any funds other than the revenues specifically pledged to the payment thereof, nor shall the Band be liable thereon other than to the extent specifically provided in accordance with this section, and such limitation shall be expressly stated in each such obligation.
- (d) The Commission, with the approval of the Band Assembly, may provide for the refunding of any obligation of the Commission through the issuance of other obligations of the Commission, entitled to rights and priorities similar in all respects to those held by the obligations that are refunded.
- (e) In connection with the issuance of any obligation pursuant to this section the Commission is authorized to waive its sovereign immunity from suit should an action be commenced to enforce the terms of such obligation, and to consent to the jurisdiction of the courts of the United States of America or the State of Minnesota in connection with any such action; provided that the Commission is without power to waive the sovereign immunity of the Mille Lacs Band of Chippewa Indians, to consent to the jurisdiction of any court over the Band, or to consent to the levy of any judgment, lien or attachment upon any property or income of the Commission, the Band or any other organization or instrumentality of the Band other than that specifically pledged pursuant to subsection (c).

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.09.

§ 13. Vesting of Property Upon Dissolution.

Upon dissolution of the Commission, the title to all property owned by it shall vest in and become the property of the Band.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 2.10.

§ 14. Uniform System of Records and Accounting.

The Commission shall prescribe to the financial record system established by the Secretary of Treasury for the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 3.

Cross References

Grants, uniform system of records and accounting, *see* 13 MLBS § 117.

§ 15. Administrative Regulations.

The Commission shall have the power to make administrative rules and regulations consistent with those established by the Band Assembly. Enforcement responsibility shall rest with the Chief Executive of the Band.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 4.

Cross References

Rules and regulations, *see* 13 MLBS § 201 et seq.

§ 16. Meetings.

The Board of Supervisors of the Commission shall meet monthly with an agenda prepared in advance by the Public Works Administrator. All proceedings of the Board shall be open to the public except when an executive session is authorized by unanimous vote of the Board. All proceedings shall be documented in writing and copies distributed to the Chief Executive and Band Assembly not more than five days following any meeting.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 6.

Cross References

Bylaws, Board meetings, *see* 13 MLBS § 110.

Open meetings, Board of Supervisors, *see* 13 MLBS § 406.

SUBCHAPTER 2

BYLAWS

Section

- 101. Establishment of Bylaws.**
- 102. Name and Offices.**
- 103. Fiscal Year.**
- 104. Public Works Association Membership.**
- 105. Association Meetings.**
- 106. Management of Commission Affairs.**
- 107. Appointment and Terms of Board.**
- 108. Vice-Chair and Secretary of Board.**
- 109. Compensation of Supervisors.**
- 110. Board Meetings.**
- 111. General Power of Board.**
- 112. Removal of Supervisors from Office.**
- 113. Powers and Duties of Chair.**
- 114. Powers and duties of Vice-Chair; Vacancy in Office of Chair.**
- 115. Powers and Duties of Secretary.**
- 116. Signatures.**
- 117. Accounting System.**
- 118. Rates and Charges for Utility Services.**
- 119. Alteration, Amendment, or Repeal of Bylaws.**
- 120. Sovereign Immunity.**

Cross References

Rules and Regulations, compliance with Bylaws, *see* 13 MLBS § 201.

§ 101. Establishment of Bylaws.

The Band Assembly hereby establishes the following Bylaws for the Commission.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.

§ 102. Name and Offices.

The name of the Commission shall be the Mille Lacs Band of Chippewa Indians-Public Works Commission. The principal office of the Commission shall be on the Mille Lacs Reservation at Vineland, Minnesota, Mille Lacs County. The Commission may also have an office at such other place or places as the Commission may direct or as the operation of the Commission may require.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.ui.

Cross References

Address of Commission, *see* 13 MLBS § 303.

§ 103. Fiscal Year.

The fiscal year of the Commission shall begin on the first day of October and end the last day of September of each succeeding year.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.02.

§ 104. Public Works Association Membership.

All adult members of the Mille Lacs Band who are enrolled on the Minnesota Agency census roll of the Bureau of Indian Affairs and who reside on trust, allotted or private property within

the jurisdiction of the Band shall be considered voting members of the Public Works Association. Each member shall be entitled to one vote. Members may, by vote, express a non-binding preference on any issue within the subject matter jurisdiction of the Commission. Voting by proxy will not be permitted. The rights, privileges and obligations of all members of the Association shall be equal. For the purposes of this provision, adult shall mean a Band member who is eighteen (18) years of age or older.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.03.

§ 105. Association Meetings.

- (a) The annual meeting of the Association shall be held at the Government Center, HCR 67, Vineland, Minnesota, County of Mille Lacs, on the second Thursday of October of each year. The meeting shall be called for the purpose of receiving the annual reports of Supervisors and the transaction of other business. This section shall constitute sufficient notice of the annual meeting.
- (b) Special meetings of the Association may be called at any time by the Chair of the Board or upon written petition to the Chair signed by 20% of the membership of the Association. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted except as is specified in the notice. A written notice of the special meeting shall be posted in public places at least ten (10) days prior to the meeting, and shall include the nature, time, place and purpose of the meeting.
- (c) At least twenty-five (25) voting members of the Association present at a duly called meeting shall constitute a quorum for the transaction of Association business. In the event that a quorum is not present, informational packages shall be mailed to the membership.
- (d) Robert's Rules of Order shall govern at all meetings of the Association. All meetings of the Association held for the purpose of taking any action within the authority of the Association shall be open to the public, except that the public or any person may be excluded from a meeting for unduly interfering with the orderly conduct of business, in matters relating to personnel, in matters adjudicatory in nature, or in matters concerning purchases that can be made only from one source.

Historical and Statutory Notes

Source:

Band Statutes 1233-MLC-20, T.I., § 7.04.

§ 106. Management of Commission Affairs.

The business and affairs of the Commission shall be managed by a board of five (5) Supervisors. The powers of the Commission are prescribed in 13 MLBS § 3 et seq.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I, § 7.05.

§ 107. Appointment and Terms of Board.

The Board shall be appointed and have such terms as prescribed in 13 MLBS § 2(b).

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, TI, § 7.051.

§ 108. Vice-Chair and Secretary of Board.

The Board shall elect by ballot a Vice-Chair and Secretary from the three Supervisors nominated by the Chief Executive, each of whom shall hold office until appointment and qualification of their successor, unless sooner removed by resignation or for just cause.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I, § 7.052.

§ 109. Compensation of Supervisors.

The members of the Board shall receive no compensation for their service as Supervisors other than reimbursement for reasonable travel expenses.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.053.

§ 110. Board Meetings.

The Board shall hold meetings at such regular intervals as prescribed by law. A majority of the Board present in person at the meeting shall constitute a quorum for the conduct of business.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.054.

Cross References

Meetings, see 13 MLBS § 16.

§ 111. General Power of Board.

The Board shall have the general power to act for the Commission in any manner not prohibited by this subchapter or the Mille Lacs Band Statutes Annotated.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.055.

§ 112. Removal of Supervisors from Office.

Any Supervisor may be removed from office as prescribed in 13 MLBS § 2(c).

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.056.

§ 113. Powers and Duties of Chair.

The Chair shall preside over all meetings of the Board of Supervisors and may call special meetings of the Board. The Chair shall have the power to perform such other duties as may be required by the Board.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.06.

§ 114. Powers and Duties of Vice-Chair; Vacancy in Office of Chair.

The Vice-Chair, in the absence or disability of the Chair, shall perform the duties of the Chair. However, in case of the resignation or permanent disability of the Chair, the Board may declare the office vacant and select a successor to fill the position until a new Public Works Administrator is appointed.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.061.

§ 115. Powers and Duties of Secretary.

The Secretary shall keep a record of the proceedings of all meetings of the Board. The Secretary shall serve or cause to be served the Bylaws of the Commission and shall make a full report of all matters and business pertaining to the office at the annual meeting, or at such other time or times as the Board may require. At the annual meeting, the Secretary shall submit a complete accounting for the past year and shall discharge such other duties as required by the Board.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.062.

§ 116. Signatures.

The signatures of both the Chair and Secretary shall be required in order to bind the Commission for any lawful action taken by the Board.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.063.

§ 117. Accounting System.

- (a) An accounting system shall be established as prescribed by 13 MLBS § 14, and include the implementation of Attachment P of OMB Circular A-102;
- (b) If the Commission shall at any time receive by way of grant any property of any Federal, State, Tribal or private agencies, the Board shall use the uniform system of records and accounting as prescribed in 13 MLBS § 14.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., §§ 7.055, 7.07.

§ 118. Rates and Charges for Utility Services.

All rates and charges for utility services shall be established by the Board of Supervisors. The Board may negotiate with large users of a particular utility service for special rates and charges provided that such rates are fair and equitable to all other users of Commission services. The Board shall review the established rate schedule of charges at least annually to ensure that sufficient income will be generated in the coming year to cover anticipated expenses. This determination shall be based on the previous year's actual expenses and the estimated budget for the coming year.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.08.

Cross References

Rates, charges and fees, *see* 13 MLBS § 8.

§ 119. Alteration, Amendment or Repeal of Bylaws.

These Bylaws may be altered, amended or repealed. Any Bylaws that are altered, amended or repealed must be presented to the Band Assembly for ratification. New Bylaws may be adopted by a majority vote of the Board of Supervisors present at any regular or special meeting of the Board called for that specific purpose.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.09.

Cross References

Adoption of Bylaws, *see* 13 MLBS § 6.

§ 120. Sovereign Immunity.

Nothing in these Bylaws shall be construed as a waiver of the sovereign immunity of the Mille Lacs Band of Chippewa Indians in any court of competent jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 7.10.

SUBCHAPTER 3

RULES AND REGULATIONS

Section

- 201. Compliance with Bylaws.**
- 202. Application for Service.**
- 203. Water Service Generally.**
- 204. Multiple Water Services.**
- 205. Transfer of Water Prohibited.**
- 206. Connection with Private Water System; Inspection.**
- 207. Extension of Main and Service Lines.**
- 208. Maintenance of Water Lines.**
- 209. Maintenance of Sewer System; Liability for Property Damage.**
- 210. Sewer Service Charge.**
- 211. Billing for Water and Sewer Services.**

Cross References

Administrative regulations, *see* 13 MLBS § 15.

§ 201. Compliance with Bylaws.

The Rules and Regulations in this subchapter are issued in compliance with the Bylaws of the Commission and are designed to govern the supplying and receiving of services rendered by the Commission. They are subject to change from time to time. If a provision of the Rules and Regulations should conflict with a provision of the Bylaws, the Bylaws shall prevail.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.

Cross References

Bylaws, *see* 13 MLBS § 101 et seq.

§ 202. Application for Service.

Application for service shall be made as provided by the Board of Supervisors. Upon review and approval of the application by the Board, a membership certificate shall be issued and service provided. The Board may enter into special service contracts in cases where the applicant has unusual service requirements.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.

§ 203. Water Service Generally.

Water service shall consist of facilities to supply water at the normal operating pressure of the system to one residence or place of business. Water service shall be considered available when the Commission maintains the water supply at the normal pressure at the point of delivery in readiness for the member's use, regardless of whether or not the member made use of it, and charges shall be made for service as of this date.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.01.

§ 204. Multiple Water Services.

One member may have more than one water service pursuant to rules established by the Board.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.011.

§ 205. Transfer of Water Prohibited.

Water service is for the sole use of the member and the member's agents or tenants at the location where it is provided, and the transfer of water by any means to another dwelling or place of business is prohibited. With the exception of emergency conditions, the sharing or reselling of water is grounds for disconnection of water service by the Board.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.011.

§ 206. Connection with Private Water System; Inspection.

There shall be no physical connection between any private water system and the water service provided by the Commission. The Commission shall have the right, at all reasonable hours, to enter upon member's premises for the purpose of inspection and enforcement of this provision. Violation of this provision is cause for disconnection of a member's water service by the Board.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.012.

§ 207. Extension of Main and Service Lines.

Main and service lines laid beyond the member's existing water system must be installed to the Commission's specifications and be paid for by the individual installing such lines.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.013.

§ 208. Maintenance of Water Lines.

It is the responsibility of the Commission to maintain the water lines up to the curb stop, or if none, up to within five feet of the building. The building is the owner's responsibility, except for buildings that are being rented from the Housing Authority or the Mille Lacs Band.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.014.

Cross References

Maintenance services, water and sewer systems, *see* 13 MLBS § 305.

Responsibilities of Commission, plan of operation, *see* 13 MLBS § 304.

§ 209. Maintenance of Sewer System; Liability for Property Damage.

The collection system and treatment facilities utilized in any sewer service provided by the Commission shall be maintained in good repair and operating order at all times, if possible. The Commission shall not be responsible for damage to members' property due to damage or malfunction of the facilities due to causes beyond its control.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.02.

Cross References

Maintenance services, water and sewer systems, *see* 13 MLBS § 305.

Responsibilities of Commission, plan of operation, *see* 13 MLBS § 304.

§ 210. Sewer Service Charge.

All members are subject to a sewer service charge as soon as sewer service is available at the point of delivery in readiness for the member's use, regardless of whether or not the member made use of it.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.03.

§ 211. Billing for Water and Sewer Services.

Members shall be billed monthly for water and sewer services based upon approved rate schedules. Billing for water and sewer services shall be as provided for in 13 MLBS §§ 401, 402.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 8.04.

SUBCHAPTER 4

PLAN OF OPERATION

Section

301. Operating Guidelines.

302. Purpose of Commission.

303. Address of Commission.

304. Responsibilities of Commission.

305. Maintenance Services.

306. Amendment of Plan of Operation.

§ 301. Operating Guidelines.

The Plan of Operation and any amendments thereto shall serve as the operating guidelines for the Commission. The General Policies of the Plan of Operation are established as provided in this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 9.

§ 302. Purpose of Commission.

The purpose of the Commission shall be to acquire, construct, manage, operate and maintain utility systems for the Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 9.01.

§ 303. Address of Commission.

The Commission shall maintain an office in Vineland, Minnesota. Its address shall be: Public Works Commission, Mille Lacs Band of Chippewa Indians, HCR 67, Box 194, Onamia, Minnesota 56359.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 9.02.

Cross References

Name and offices, *see* 13 MLBS § 102.

§ 304. Responsibilities of Commission.

(a)

- (1) The Commission is responsible for providing safe, adequate water for a fee to those buildings connected to the mainlines of the community water system. Responsibility for maintenance will include water sources, storage tanks, controls, mainlines, valves and hydrants, and service lines up to the curb stops, or if none; up to within five feet of the building.

- (2) The Commission is responsible for providing sanitary disposal of domestic waste for a fee to those buildings connected to the mainlines of Band sewage systems. Responsibility for maintenance will include treatment facilities, pumping stations, mainlines and manholes, and service lines to the property lines only.
 - (3) The remainder of the sewer and water service lines and interior building plumbing shall be the responsibility of the member, excluding buildings rented from the Housing Authority or the Band, which are the responsibility of the appropriate entity.
- (b) To ensure the provision of adequate water and sewage service to its members, the Commission shall retain qualified personnel on duty or on call at all times. The Commission shall respond in a timely manner to breakdowns and other emergencies.
 - (c) Services for individual septic tank systems may be available at the Commission's discretion in areas within the territorial jurisdiction of the Commission. The Commission may elect to provide for the pumping of individual septic tanks for a fee. The Commission shall have no responsibility for this service except in instances of such elective pumping. The Commission cannot guarantee the operation of improperly designed, constructed or operated septic tank systems.
 - (d) The Commission may elect, as resources permit, to perform certain plumbing repairs or new installations for a fee in those buildings served by one of the Commission's systems.
 - (e) Private wells are the responsibility of the individual property owner, and the Commission cannot guarantee the operation of improperly designed, constructed or operated well systems or their water quality.
 - (f) The Commission may, in its discretion, agree to perform construction, operation or maintenance services under contract with tribal, governmental, or private bodies.
 - (g) In its discretion, the Commission may assume responsibility to provide other utility services and adopt regulations governing the provision of such other services.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 9.03.

Cross References

Maintenance of sewer system, *see* 13 MLBS § 209.

Maintenance of water lines, *see* 13 MLBS § 208.

§ 305. Maintenance Services.

The Commission shall develop and follow a regular schedule of maintenance services for each water and sewage system under its control. These services shall include, but not be limited to, the following:

- (a) Inspect and operate valves and hydrants, inspect and repair water mains for leaks or damage, flush water lines, inspect storage tanks and level indicators, and adjust and service controls; and
- (b) Flush sewer mains, remove debris from manholes, control weeds and erosion at lagoons inspect and service lift station and mechanical aerators, and, where the responsibility has been assumed by the Commission, inspect individual septic tanks.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 9.04.

Cross References

Maintenance of sewer system, Rules and Regulations, *see* 13 MLBS § 209.

Maintenance of water lines, Rules and Regulations, *see* 13 MLBS § 208.

§ 306. Amendment of Plan of Operation.

The Plan of Operation may be amended by a simple majority of Supervisors in attendance at a meeting called for that purpose and the subsequent approval of the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 9.05.

SUBCHAPTER 5

POLICIES

Section

401. Billing and Payment Policy.

402. Billing and Collection Policies.

403. Enforcement Policies.

404. Bookkeeping and Handling of Funds Policies.

405. Management Policies.

406. Public Service.

§ 401. Billing and Payment Policy.

- (a) Billing for water and sewage services shall be done jointly. In instances where a member receives only one service, the member shall only be billed for that service. Each bill shall be based upon the usage of water and sewage services under an applicable rate schedule. The schedule shall provide for a minimum monthly service charge, regardless of usage, in addition to rates for water and sewage services in excess of the minimum monthly service charge.
- (b) Bills shall be sent to members by the sixth business day of each month for services rendered the previous month, and shall be due and payable at the location indicated on the face of the bill ten days thereafter. Unpaid bills shall become delinquent five days after the due date. The Commission shall then have three days in which to notify the member, either personally or by certified mail, that they are delinquent and subject to a penalty and disconnection of water and sewage service unless their account is paid in full. The member shall have two days after the mailing of notice or personal notification to pay the bill in full without penalty. Thereafter, the Commission may impose a twenty-five dollar (\$25.00) penalty, in addition to any other amounts due or chargeable, and may disconnect services at the member's expense.
- (c) Bills not paid by the due date shall be subject to a fifteen percent (15%) late charge on the unpaid balance in addition to any other service charges or penalties.
- (d) A minimum reconnection fee of twenty-five dollars (\$25.00) shall be charged for disconnected service. However, should the actual cost of reconnection exceed twenty-five dollars (\$25.00), the member shall be charged the actual cost. Any service which has been disconnected, whether due to delinquency or any other reason, shall be reconnected only upon payment of any past due amount and the reconnection fee.
- (e) Partial payments may be accepted, but shall not relieve the member of the responsibility for paying bills by their due date, nor does it extend the due or delinquent date.
- (f) Advance payments may be accepted and credited to the member's account monthly until exhausted.
- (g) All returned checks shall result in a delinquent account, if the check is not redeemed by the due date stated on the applicable bill. In the event that a returned check is not redeemed by the due date, the delinquent account procedures listed in subsection (b) shall apply.
- (h) All members who issue a dishonored check shall be charged a fee of fifteen dollars (\$15.00) to reimburse the additional administrative expenses associated with ensuring payment on these items.

- (i) The minimum monthly service charge shall be increased from six dollars (\$6.00) to eight dollars (\$8.00) for combined water and sewage services. In the event that a member only receives one service, the member shall only be assessed half the minimum monthly service charge.
 - (1) Notwithstanding any provision of this section to the contrary, members who have attained the age of fifty-five or who qualify for services from the Elderly Nutrition Program, irrespective of age, shall be exempt from any increase in the minimum monthly service charge above the amount assessed as of January 1, 1985.
 - (2) Notwithstanding any provision of this chapter to the contrary, members who have attained the age of fifty-five or who qualify for services from the Elderly Nutrition Program shall be exempt from the payment of all service fees if they have a gross monthly income of less than three hundred dollars (\$300.00). Verification of income shall be certified by the Contracting Officer of the Food Commodity Program or provided by the member seeking this exemption.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 10.

Cross References

Billing for water and sewer services, *see* 13 MLBS § 211.

§ 402. Billing and Collection Policies.

Billing and collection policies shall be as follows:

- (a) the Commission shall maintain a complete and up-to-date record of all members served by those systems operated by the Commission. Additions and deletions to the records shall be made as soon as the Commission learns of the changes;
- (b) the Commission shall ensure that each member is billed for services in accordance with 13 MLBS § 401 and this Section;
- (c) members may make payments by cash or check or money order, payable to the Commission, by mailing payments to the Commission's office at the Mille Lacs Government Center or personally delivering payments thereto. Members shall receive a receipt for payments personally made at the Government Center;
- (d) members who live in buildings managed by the Housing Authority or other tribal enterprises shall include monthly water and sewage payments along with their rent or

house payment. The agency collecting the payments shall then pay the Commission for services to all of its housing occupants. The agency shall receive a receipt for this payment; and

- (e) members requesting a new service, reconnection, plumbing repairs, or pumping of a septic tank shall make arrangements with the Director of Operations for Public Works for payment prior to receiving the services. Normally, such charges shall be due on the next month's bill.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 10.09.

Cross References

Billing for water and sewer services, *see* 13 MLBS § 211.

§ 403. Enforcement Policies.

Enforcement policies shall be as follows:

- (a) the Commission is hereby authorized to collect fees for services and to disconnect services for nonpayment; and
- (b) the Commission shall enforce its regulations and fee collections by disconnecting services to any and all violators and delinquent members. The Commission shall not seek to attach members' property nor to have fines assessed by the Court of Central Jurisdiction, except in cases of blatant or continued abuse or destruction of property.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 10.10.

§ 404. Bookkeeping and Handling of Funds Policies.

Bookkeeping and handling of funds policies shall be as follows:

- (a) the Commission shall follow the established Band procedures for bookkeeping and banking. This will allow the convenient handling of Commission funds through the bank accounts of the Band, while also providing a separate accounting of the funds. The Public Works Administrator shall make a monthly accounting of the Commission's funds available to the Board;

- (b) actual handling of the Commission's funds shall be performed by the Band's Secretary of Treasury; and
- (c) all accounts and ledgers of the Commission shall be available for audit at any time by any auditor appointed by the Secretary of Treasury.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 10.11.

§ 405. Management Policies.

Management policies shall be as follows:

- (a) the Board may establish overall program objectives which shall be implemented by the Public Works Administrator;
- (b) the Public Works Administrator shall manage the daily operations of the Commission. The Public Works Administrator shall have responsibility to direct the work of all employees of the Commission and shall establish a direct chain of command for orderly functioning of the office and operation and maintenance of all utility systems;
- (c) job descriptions for all employees shall be developed and followed; and
- (d) employees of the Commission shall receive wages and benefits comparable to other employees of the Band. Employees shall have the right of appeal pursuant to the Band's personnel policies should any employment-related dispute not be resolved to their satisfaction by the Public Works Administrator or the Board.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 10.12.

Cross References

Government employees, *see* 6 MLBS § 1 et seq.

§ 406. Public Service.

The Commission is created in order to serve the people of the Mille Lacs Band. Yearly meetings of the Board of Supervisors shall be open to the public, except as provided elsewhere in this Chapter. Members with particular problems or complaints shall request inclusion on the agenda of the next Board meeting.

Historical and Statutory Notes

Source:

Band Statute 1233-MLC-20, T.I., § 10.13.

Cross References

Board meetings, *see* 13 MLBS § 16.

CHAPTER 2

COMMISSIONER OF COMMUNITY DEVELOPMENT

Section

1001. Powers and Duties of the Commissioner of Community Development.

1002. Term of Office.

§ 1001. Powers and Duties of the Commissioner of Community Development.

The Commissioner of Community Development shall have the responsibility to administer, manage, supervise and coordinate activities for Community Development, Public Works, Facilities Management, Transportation and the Housing Department of the Mille Lacs Band of Ojibwe Indians. In carrying out the responsibilities within his or her jurisdiction, the Commissioner of Community Development shall have the following powers and duties:

- (a) to provide an effective and efficient system of administration to plan, direct and evaluate the functions of Community Development, Public Works, Facilities Management Transportation and the Housing Department;
- (b) to provide technical assistance to the Chief Executive, Band Assembly and other departments of the Mille Lacs Band as requested and to recommend or initiate any appropriate action as required with respect to such matters;
- (c) to provide information to Band members and other members of the public on programs and services of the various departments under the jurisdiction of the Commissioner of Community Development;
- (d) to conduct investigations in order to ensure appropriate resolution of complaints of Band members as well as the general public and order specific actions when justified not inconsistent with other applicable law;
- (e) to supervise employees, assign or delegate tasks, define levels of expected performance, and evaluate the performance of department heads and staff not inconsistent with other applicable law;

- (f) to prepare and recommend operating and capital improvement budgets for the Band, including but not limited to construction and maintenance projects as well as equipment acquisition and replacement;
- (g) to oversee the Debris Clearance and Restoration portion of an Emergency Operation Plan and coordinate responsibilities for a Blizzard Emergency Preparedness Plan;
- (h) to develop, oversee and chair Community Development Committees;
- (i) to develop and coordinate a Facilities Management Plan on behalf of the Mille Lacs Band of Ojibwe, and direct the maintenance of all Band Facilities not inconsistent with other applicable law;
- (j) to negotiate contracts on behalf of the Mille Lacs Band of Ojibwe and when authorized to do so by Band Statute to enter into such contracts not otherwise inconsistent with other applicable law;
- (k) to inspect and ensure the safety of all buildings and facilities within the jurisdiction of the Mille Lacs Band of Ojibwe and to condemn the same when appropriate;
- (l) To acquire through gift, lease, purchase, in the name of the Band, lands or any interest in lands deemed suitable for the future interests of the Band;
- (m) to obtain through grant proposals funds that may be available to meet the housing and community needs of the Band;
- (n) to ensure that all contractors and/or any sub-contractor comply with minimum wage and maximum hours of labor or any attached conditions as stipulated in any agreement relating to a federal, state or agency financial assistance housing program;
- (o) to develop a Strategic Housing Plan that meets the Band's Housing vision and mission and ensure that the Housing Board approves the same with ratification by Band Assembly before implementation;
- (p) to develop Housing Policies that meets the Band's Housing vision and mission and ensure that the Housing Board approves the same with ratification by Band Assembly;
- (q) to join or cooperate with any other public housing agency or agencies operating under the laws or ordinance of a state or another tribe for the purpose of financing, planning, undertaking, owning, constructing, operating or contracting with respect to a housing project(s) serving Band Members;
- (r) to lease property from the Band and others, for such periods as are authorized by law, and to hold and manage or to sublease the same;

- (s) to serve Band members through home loans, renovation loans or any new housing program loan as stipulated by loan agreement; and
- (t) to purchase insurance from any stock or mutual company for any property or against any risk or hazards.

Historical and Statutory Notes

Source:

Band Ordinance 20-97, § 4.
Band Ordinance 18-04, § 114.

§ 1002. Term of Office.

The Commissioner of Community Development shall serve a four-year term of office expiring June 30, 1999 and on this date every four years hence.

Historical and Statutory Notes

Source:

Band Ordinance 20-97, § 5.

TITLE 14 - CAPITAL IMPROVEMENTS

Chapter

1. Capital Improvements Authority

Section

1

CHAPTER 1

CAPITAL IMPROVEMENTS AUTHORITY

Section

1. Establishment.
2. Board of Commissioners.
3. Removal of Board Members.
4. Compensation.
5. Quorum.
6. Records of Board Meetings and Actions.
7. Financial Records and Reports.
8. Meetings.
9. Enumerated Powers.

- 10. Borrowing.**
- 11. Sovereign Immunity.**
- 12. Assets and Liabilities of the Authority.**

Historical and Statutory Notes

The Preamble of Band Statute 1234-MLC-53 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians a statute to establish and empower the Mille Lacs Capital Improvements Authority. "Band Statute 1234-MLC-53, § 7 provides:

"Section 7. Severability. If any provision of this Chapter or its application to any person or set of circumstances is held invalid, the remainder of the Chapter or its application to other persons or circumstances shall not be affected."

§ 1. Establishment.

The Mille Lacs Capital Improvements Authority of the Mille Lacs Band of Chippewa Indians is established as an instrumentality of the Executive Branch of Tribal Government with these powers expressly delegated by the Band Assembly. The Capital Improvements Authority of the Mille Lacs Band of Chippewa Indians is established to acquire, construct, finance, operate and maintain such public improvements of the Band as may from time to time be designated by the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1234-MLC-53, § 1.

§ 2. Board of Commissioners.

- (a) The affairs of the Capital Improvements Authority shall be managed by a Board of Commissioners comprised of five persons. The Board members shall be nominated by the Chief Executive and ratified by the Band Assembly.
- (b) The Chief Executive shall select three among the Board members who shall serve a four-year term, and two who shall serve a two-year term. Subsequent appointments after these terms expire shall run for four years.
- (c) At least one member of the Board shall be a Band member residing in District 1; at least one member of the Board shall be a Band member residing in District 2; at least one member of the Board shall be a Band member residing in District 3. Each member shall hold office until a successor has been nominated and ratified.
- (d) The Chief Executive shall name one of the Board members as Chair of the Board. The Board shall select from among its own members a Vice Chair, a Secretary and a Treasurer, and any member may hold two of these positions. In the absence of the

Chair, the Vice-Chair shall preside, and in the absence of both the Chair and the Vice-Chair, the Secretary shall preside.

Historical and Statutory Notes

Source: Band Statute 1234-MLC-53, § 2.

Cross References

Designation of Band districts, *see* 2 MLBS § 11.

§ 3. Removal of Board Members.

A member of the Board may be removed from office for just cause as defined by 4 MLBS § 15(g).

Historical and Statutory Notes

Source:
Band Statute 1234-MLC-53, § 2.03.

§ 4. Compensation.

The Board members shall not receive compensation for their services but shall be entitled to reasonable reimbursement for their expenses, including travel expenses, incurred in the discharge of their duties.

Historical and Statutory Notes

Source:
Band Statute 1234-MLC-53, § 2.04.

§ 5. Quorum.

A majority of the full Board shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of the full Board.

Historical and Statutory Notes

Source:
Band Statute 1234-MLC-53, § 2.05.

§ 6. Records of Board Meetings and Actions.

The Secretary shall keep full and accurate records of all meetings and actions taken by the Board. Records kept in accordance with this section shall be prima facie evidence of the information contained therein before any court of competent jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1234-MLC-53, § 2.06.

§ 7. Financial Records and Reports.

The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report in written form to the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1234-MLC-53, § 2.07.

§ 8. Meetings.

Meetings of the Board shall be held as deemed appropriate with an agenda prepared in advance by the Chair. All proceedings of the Board shall be open to the public except when an executive session is authorized by unanimous vote of the Board. All proceedings shall be documented in writing and copies distributed to the Chief Executive and Band Assembly not more than five days following each meeting. Meetings may be held upon twenty-four hours actual notice.

Historical and Statutory Notes

Source:

Band Statute 1234-MLC-53, § 2.08.

§ 9. Enumerated Powers.

The Capital Improvements Authority shall have the following specifically enumerated powers:

- (a) to adopt and use an official seal;
- (b) subject to Band Assembly approval, to enter any contracts or agreements with any governmental agency, Federal, State, local or tribal, or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to Federal or State financial assistance;

- (c) to lease property from the Band and others for such periods and to hold and manage or to sublease the same;
- (d) to borrow or lend money, to guarantee the obligations of other tribal entities of the Band, and to issue evidences of indebtedness in accordance with 14 MLBS § 10;
- (e) subject to Band Assembly approval, to pledge the assets and receipts of the Authority as security for debts;
- (f) subject to Band Assembly approval, to acquire, construct, sell, lease as lessor or lessee, exchange, transfer or assign real or personal property or interests therein;
- (g) to purchase land or interests in land or take the same by gift, and to lease land or interests in land to the extent provided by law;
- (h) to prudently invest such funds as are not required for immediate disbursement;
- (i) to establish and maintain such bank accounts as may be necessary or convenient;
- (j) to employ such officers and employees, permanent or temporary, as the Authority may require, and to delegate to such officers and employees such powers and duties as the Board deems proper;
- (k) to adopt bylaws which shall be submitted to the Band Assembly for approval; and
- (l) to take such further actions as are necessary to carry out the purposes as described in 14 MLBS § 1.

Historical and Statutory Notes

Source:

Band Statute 1234-MLC-53, § 3.

§ 10. Borrowing.

- (a) Subject to the limitations set forth in this Section, the Authority shall have the power to borrow money and incur indebtedness, or to guarantee the indebtedness of another agency, instrumentality or entity of the Band, by issuing its obligations, in its own name or in the name of and on behalf of the Mille Lacs Band of Chippewa Indians, for purposes of acquiring, constructing, maintaining, managing and improving any public improvements within the territorial jurisdiction of the Band consistent with the purposes of the Authority. Such obligations shall be issued and sold in such manner and shall be in the amount and form and bear interest at the rate or rates set by the Authority. Each obligation must be approved by the Band Assembly prior to its issuance.

- (b)
- (1) All obligations incurred under this Section shall be payable solely:
 - (i) from revenues, income, receipts and profits derived by the Authority from projects operated by it whether or not the projects were financed in whole or in part with the proceeds of such obligations;
 - (ii) from all or any part of the revenues of any business conducted by the Corporate Commission and allocated to the Authority by the Band Assembly;
 - (iii) from the proceeds of evidences of indebtedness issued and sold by the Authority which are payable solely from any of such revenues, income, receipts and profits; or
 - (iv) from federal or state grants or other money received by the Authority which are available therefor.
 - (2) The Authority may further secure these obligations with any assets of the Authority as the Authority may specifically pledge to the payment of the obligations.
- (c) The Authority may pledge to the repayment of any such obligations and the interest coming due thereon any or all of the sources set forth in subsection (b), but is without power to pledge or encumber any other revenues, income or assets of the Mille Lacs Band of Chippewa Indians, or any other organization or instrumentality of the Band to the repayment of such obligations. The Band Assembly may, if it deems it to be in the best interests of the Band to do so, pledge to the payment of any such obligations, or authorize any organization or instrumentality of the Band to pledge to the payment of such obligations, any specific revenues, income or assets of the Band or any organization or instrumentality of the Band as it may deem appropriate. In any event, no such obligations shall be payable from, nor be a charge upon, any funds other than the revenues specifically pledged to the payment thereof, nor shall the Band be liable thereon other than to the extent specifically provided in accordance with this section. These limitations shall be expressly stated in each obligation issued pursuant to this section.
- (d) The Authority, with the approval of the Band Assembly, may provide for the refunding of any obligation of the Authority through the issuance of other obligations of the Authority, entitled to rights and priorities similar in all respects to those held by the obligations that are refunded.
- (e) In connection with the issuance of any such obligation, the Authority is authorized to waive its sovereign immunity from suit should an action be commenced to enforce

the terms of the obligation, and to consent to the jurisdiction of the courts of the United States of America or the State of Minnesota in connection with any such action; provided that the Authority is without power to waive the sovereign immunity of the Mille Lacs Band of Chippewa Indians, to consent to the jurisdiction of any court over the Band, or to consent to the levy of any judgment, lien or attachment upon any property or income of the Authority, the Band or any other organization or instrumentality of the Band other than that specifically pledged pursuant to subsection (c).

Historical and Statutory Notes

Source:

Band Statute 1234-MLC-53, § 4.

§ 11. Sovereign Immunity.

- (a) As an instrumentality of the Mille Lacs Band of Chippewa Indians, the Authority shall be clothed by federal and tribal law with all the privileges and immunities of the Band, except as specifically limited by this chapter, including sovereign immunity from suit in any state, federal or tribal court. Nothing contained in this chapter shall be deemed or construed to be a waiver of sovereign immunity by the Authority from suit, which may be waived only in accordance with this chapter.
- (b) Sovereign immunity of the Authority may be waived only by formal resolution of the Board of Commissioners.
- (c)
 - (1) Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the Authority. Any waiver of sovereign immunity shall be specific and limited as to:
 - (i) duration,
 - (ii) the grantee,
 - (iii) the particular transaction,
 - (iv) definite property or funds, if any, of the Authority,
 - (v) a particular court having jurisdiction pursuant thereto, and
 - (vi) the law that shall be applicable thereto.

- (2) Any express waiver of sovereign immunity by resolution of the Board shall not be deemed a waiver of the sovereign immunity of the Mille Lacs Band of Chippewa Indians, a consent to the jurisdiction of any court over the Band, or a consent to the levy of any judgment, lien or attachment upon any property or income of the Authority, the Band or any other organization or instrumentality of the Band other than that specifically pledged or assigned.

Historical and Statutory Notes

Source:

Band Statute 1234-MLC-53, § 5.

§ 12. Assets and Liabilities of the Authority.

- (a) The Authority shall have only those assets specifically assigned to it by the Band or acquired in its name by the Band or the Authority on its own behalf. Nothing in this Chapter nor any activity of the Authority shall implicate or in any way involve the credit or assets of the Band or obligate the Band for the obligations of this Authority except for any liability or obligation specifically assumed in writing.
- (b) The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Band Assembly or the Band. However, for construction projects, nothing in this section shall prevent the Band from collecting the general sales tax contained in 22 MLBS § 502, or the public service occupations tax contained in 22 MLBS § 601.
- (c) All property of the Authority, including funds acquired or held by the Authority pursuant to this chapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial powers shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. The provisions of this section shall not apply to or limit the right of a secured party to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its revenues or properties.
- (d) Upon dissolution of the Authority, the title to all property owned by it shall vest in and become the property of the Band.

Historical and Statutory Notes

Source:

Band Statute 1234-MLC-53, § 6.

TITLE 15 – GAMING REGULATORY ACT

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CHAPTER 1

GAMING REGULATORY ACT

<u>Subchapter</u>	<u>Section</u>
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Historical and Statutory Notes

The Preamble and §§ 1 and 17 of Band Ordinance 44-03 (Section I of this Title) provide: “Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe the following act for the purpose of establishing a statutory system for the effective regulation of gaming activities within the jurisdiction of the Band to be called the Gaming Regulatory Act; establishing an independent regulatory authority called the Mille Lacs Band Gaming Regulatory Authority; and for other purposes.”

“Section 1. REPEAL AND REPLACEMENT OF TITLE 15 AND GAMING REGULATIONS; EFFECTIVE DATE; TRANSITION. This Gaming Act and regulations promulgated thereunder shall constitute the entire gaming laws and regulations of the Band. The prior Title 15 of Band Statutes is hereby repealed and replaced. Upon final approval of Initial Detailed Gaming Regulations by the Gaming Authority (hereinafter the “Authority”) and the Band Assembly pursuant to section 11(d)(2)(C) [§ 305(c) of this Title], such regulations will replace and supersede all then existing gaming regulations. Authority control of gaming regulation shall become effective upon the date that this Act is filed with and approved by the National Indian Gaming Commission and the first Director of the Office of Gaming Regulation and Compliance, as described in section 12 of this Act [§§ 401 - 403 of this Title], takes the oath of office. The Authority Board of Directors, the Director of the Office of Gaming Regulation and Compliance, the Commissioner of Corporate Affairs, and the Commissioner of Finance shall work together to assure the smooth transition of gaming regulation from the Commission to the Authority.”

“Section 17. SEVERABILITY. If any provision or application of this Act is determined by judicial review to be invalid, such determination shall not be held to render such provision inapplicable to other persons or circumstances, nor shall such determination render invalid any other provision of this Act.”

SUBCHAPTER 1
GENERAL PROVISIONS

Section

- 1. Findings.**
- 2. Declaration of Purpose.**
- 3. Definitions.**

§ 1. Findings.

The Mille Lacs Band of Ojibwe Assembly finds that:

- (a) The Mille Lacs Band of Ojibwe has a long history of conducting different forms of gaming within our sovereign territory. Prior to entering into treaties with the United States the Band allowed many traditional forms of gaming;
- (b) Gaming on Band Lands is a valuable means of generating revenues needed by the Band to enhance economic development and self-sufficiency, promote and strengthen self-governance, increase Band member employment, and to fund essential Band social programs and services; and
- (c) Band Regulation and control of gaming on Band Lands is necessary in order to ensure the welfare and best interests of the Band, its members and patrons of the Band's gaming enterprises, prevent any proliferation of organized crime and other corrupting influences on Band Lands, protect the fairness of gaming conducted on Band Lands and preserve the political integrity of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 2.

§ 2. Declaration of Purpose.

The express purpose of Chapter 1 of this Title is:

- (a) to provide a statutory basis for the regulation of gaming on Band Lands to ensure that gaming is shielded from organized crime and other corrupting influences, to ensure that the Band is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and the player;

- (b) to regulate and control gaming on Band Lands for the protection of gaming as a means of promoting economic development, self-sufficiency, and strong tribal government;
- (c) to foster a spirit of cooperation with federal officials in the regulation of gaming;
- (d) to foster a spirit of cooperation with Minnesota officials in the conduct of Class III gaming pursuant to any Compacts;
- (e) to ensure that gaming on Band Lands is conducted in conformity with Band law, the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 and regulations promulgated pursuant thereto, applicable State law and the Compact;
- (f) to ensure that the construction and maintenance of gaming facilities and the operation of all gaming conducted at such facilities is conducted in a manner which adequately protects the environment, public health, and safety; and
- (g) to establish an independent regulatory authority charged with oversight and enforcement of gaming regulatory matters under Band law, with the goal of becoming self-regulating under IGRA and regulations promulgated thereto.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 3.

§ 3. Definitions.

For the purpose of Chapter 1 of this Title, the following definitions shall apply:

- (a) **“Authority”** means the Mille Lacs Band Gaming Regulatory Authority established by Chapter 1 of this Title.
- (b) **“Authority Data”** means all information, files, reports, records, correspondence and other data collected, created, received, maintained or disseminated by the Authority regardless of its physical form, storage method, or conditions of use.
- (c) **“Applicant”** means an individual or entity that applies for a Band gaming license or certification.
- (d) **“Background Investigation”** has the meaning given in 25 C.F.R. Part 556.4.
- (e) **“Band”** means the Mille Lacs Band of Ojibwe.
- (f) **“Band Gaming Laws”** means Section I of this Title and all subsequent amendments thereto, and all detailed regulations promulgated thereunder.

- (g) **“Band Lands”** means any land within the jurisdiction of the Band upon which gaming activities pursuant to IGRA may be conducted.
- (h) **“Board”** means the Board of Directors of the Gaming Regulatory Authority.
- (i) **“Closely associated independent contractor”** means any contractor that shares common ownership, officers, or directors with any management principal or person related thereto.
- (j) **“Chairperson”** means the Chairperson of the Board.
- (k) **“Charitable Gaming”** means any Gaming carried out by an Indian Charitable Organization on Band Lands.
- (l) **“Compact(s)”** means any Class III tribal-state gaming compact in effect between the Band and the State of Minnesota to govern the conduct of certain Class III Gaming Activities on Band Land.
- (m) **“Compliance”** means that any gaming and gaming related activity regulated by Chapter 1 of this Title is conducted in accordance with applicable laws.
- (n) **“Compliance Determination”** has the meaning given in § 308 of this Title.
- (o) **“Confidential Data”** means Authority Data on a Person that by Band statute, regulation or order, or by applicable federal law, is not made available to the public. The term includes Confidential Limited Availability Data and Confidential Restricted Availability Data.
- (p) **“Confidential Financial Information”** means any financial accounting records, ledgers, reports, and audits; and any profit and loss statements, cash flow projections, tax returns, invoices, checks, bank records, or other data on the revenues, expenditures, or financial obligations of a Person, other than a Gaming Enterprise.
- (q) **“Confidential Limited Availability Data”** means Confidential Data that by Band statute, regulation or order, or by applicable federal law is made accessible to the subject of the data (if any).
- (r) **“Confidential Restricted Availability Data”** means Confidential Data that is not available to the subject of the data.
- (s) **“Corporate Commission”** means the Corporate Commission of the Mille Lacs Band of Ojibwe Indians as established by 16 MLBS section 101.
- (t) **“Corporate Commissioner”** means the Mille Lacs Band Commissioner for Corporate Affairs.

- (u) **“Court of Central Jurisdiction”** or **“CCJ”** means the Court of Central Jurisdiction of the Mille Lacs Band of Ojibwe Indians established by 5 MLBS § 1.
- (v) **“Director”** means the director of the Office of Business Regulation and Compliance as described in section 401 of this Title.
- (w) **“Exclusion List”** means a list prepared pursuant to section 312 of this Title that contains the names of Persons who shall not be permitted in any Gaming Enterprise.
- (x) **“Financial Information on a Gaming Enterprise”** includes, but is not limited to any financial accounting records, ledgers, reports, and audits; and any profit and loss statements, cash flow projections, tax returns, invoices, checks, bank records, or other data on the revenues, expenditures, or financial obligations of a Gaming Enterprise.
- (y) **“Gaming”** means an activity in which a person stakes or risks something of value on the outcome of a contest of chance or a future contingent event, not under his or her control or influence, upon an agreement or understanding that the person, or someone else, will receive something of value in the event of a certain outcome, but shall not include a bona fide business transaction.
- (z) **“Gaming Activity”** or **“Gaming Activities”** means any Class I, Class II, or Class III gaming activity as defined by the Indian Gaming Regulatory Act and conducted by or under the jurisdiction of the Band.
- (aa) **“Gaming Compliance Officer”** or **“GCO”** means the officer described in section 401(a)(4) of this Title.
- (bb) **“Gaming Contractor”** means any person or entity that supplies gaming devices or other gaming equipment, personnel, or services, including gaming management or consulting services, to any Gaming Activity or Gaming Enterprise.
- (cc) **“Gaming Enterprise(s)”** means the Grand Casino Mille Lacs, the Grand Casino Hinckley and any other commercial facility or business owned by the Band through the Corporate Commission and operated, in whole or in part, for the conduct of Gaming or related to Gaming Activities within the jurisdiction of the Band.
- (dd) **“Gaming Regulatory Authority”** means the independent agency established herein and designated with responsibility for performing the Band’s regulatory responsibilities and duties under IGRA, this Act, and any Compacts.
- (ee) **“Gaming Supplier”** means any contractor or other supplier of gaming goods, supplies, materials, equipment, or services to any Gaming Enterprise, the aggregate annual cost of which to the Band’s Gaming Enterprises is at least \$25,000. The term Gaming Supplier shall be more particularly defined in detailed gaming regulations to be promulgated by the Authority.

- (ff) **“Hearing Examiner”** means an individual employed or contracted with by the Authority for the purpose of conducting a hearing pursuant to subchapter 4 (§§ 301-314) of this Title. Such person shall: (1) be independent of any claimant, the Corporate Commission, any Gaming Enterprise, and any affiliates of the foregoing; (2) be an attorney in good standing licensed by the Mille Lacs Band and any State, and (3) have relevant legal experience.
- (gg) **“Immediate Family”** or **“related to”** means persons who are the subject individual’s spouse, parents, siblings, and children (either adopted or biological).
- (hh) **“Indian Charitable Organization”** means any non-profit association or corporation, or unincorporated community group with a primary purpose of engaging in social, educational, cultural, religious or charitable activities, or a combination thereof within the tribal community.
- (ii) **“Indian Gaming Regulatory Act”** or **“IGRA”** means the Act of October 17, 1988, Public Law 100-497, 25 USC section 2701 as amended, and all regulations promulgated pursuant thereto.
- (jj) **“Information on a Pending Compliance Recommendation”** means (1) any data gathered by the Director in connection with an ongoing investigation for which a Compliance Recommendation is required pursuant to section 402(b) of this Title or (2) any Compliance Recommendation that has been completed by the Director but not yet finally acted upon by the Authority.
- (kk) **“Information on a Pending License Application”** means any data submitted by the applicant or gathered by the Director or the Authority in connection with a pending application for a license required by Section I of this Title.
- (ll) **“Initial Detailed Gaming Regulations”** means a full and complete set of gambling regulations, to be the first regulations promulgated by the Authority pursuant to section 305 of this Title and submitted to the Band Assembly for final approval, to comprehensively regulate all aspects of gaming necessary to (1) ensure effective, independent oversight and regulation of all gaming conducted on Reservation lands; (2) ensure that Persons who hold key positions in the Band’s gaming enterprises are honest, trustworthy and of good moral character; (3) protect Band assets through implementation of strong, effective financial accounting and internal cash controls; (4) comply with all applicable law, including Band law, federal law and Band/State gaming compacts; and (5) clearly define and distinguish the respective duties and powers of casino management and gaming regulation so that they complement one another in such a manner as to maximize the benefits of gaming to the Band and the surrounding non-Indian community. (mm) **“Key Employee”** means any person as defined in 25 C.F.R. Part 502.14 and any other persons who may, pursuant to the Detailed Gaming Regulations, be included under the definition of **“Key Employee”** and become subject to such requirements.

- (mm) **“Management Principal”** means any person who is an officer or member of the Board of Directors or other person defined as a Primary Management Official as defined in 25 CFR Part 502.19.
- (nn) **“Net Revenues”** means gross gaming revenues of an Indian gaming operation less: (1) Amounts paid out as, or paid for, prizes; and (2) Total gaming-related operating expenses, excluding management fees.
- (oo) **“Non-Key Employee”** means any person employed by a Gaming Enterprise or the Corporate Commission, who is not otherwise defined as a Key Employee or Primary Management Official.
- (pp) **“Office of Gaming Regulation and Compliance”** or **“OGR&C”** means the office charged with the responsibility of, inter alia, regulating gaming activity within the jurisdiction of the Band.
- (qq) **“Person”** means any individual, partnership, corporation, association, business trust, joint stock company, unincorporated association or society, any other business or non-business entity, or the legal representative of such entity.
- (rr) **“Personnel Data”** means data on individuals collected because the individual is or was an associate of, or an applicant for employment with, the Authority or the OGR&C, or acts as an independent contractor therefor.
- (ss) **“Primary Management Official”** means any person as defined in 25 CFR Part 502.19 and any other persons who, at the discretion of the Authority, may be included under the definition of “Primary Management Official” and become subject to such requirements.
- (tt) **“Security Information”** means Authority Data the disclosure of which would be likely to substantially jeopardize the security of Gaming Enterprise information, possessions, associates, guests or property against theft, tampering, improper use, illegal disclosure, trespass or physical injury.
- (uu) **“Trade Secret Information”** means Authority Data, including formula, pattern, compilation, program, device, method, technique, or process (1) that was supplied by the affected Person; (2) that is the subject of efforts by the affected Person to maintain its secrecy; and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic benefit from its disclosure or use.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 4.

SUBCHAPTER 2
GAMING ACTIVITY

Section

- 101. General Prohibition on Gaming Activities; Violations Punishable.**
- 102. Unauthorized Gaming Prohibited.**
- 103. Permitted Gaming.**
- 104. Tribal-State Compacts for Class III Gaming Authorized.**
- 105. Use of Band Lands for Gaming Purposes.**
- 106. Health, Safety, and Environmental Protections.**
- 107. Prohibited Activities.**

§ 101. General Prohibitions on Gaming Activities; Violations Punishable.

All Gaming Activity on Band Lands shall be conducted in compliance with Section I of this Title and any Gaming Activities not authorized by Chapter 1 of this Title or by regulations promulgated pursuant to this Title by the Authority is prohibited. Any violations of Section I of this Title shall be punishable through means adopted by Chapter 1 of this Title, the Authority and as otherwise provided by Band law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 5.

§ 102. Unauthorized Gaming Prohibited.

All Gaming Activities on Band Lands, whether class I, II, or III, are prohibited and unlawful, except as expressly authorized by Chapter 1 of this Title.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 6(a).

§ 103. Permitted Gaming.

- (a) **Class I Gaming.** Class I traditional games are permitted to the extent consistent with tribal custom and practice. The Authority may prohibit and prevent any conduct which is claimed to be class I gaming if it finds that such conduct is not in accordance with tribal customs or practices or violates the IGRA or other applicable law. The Authority shall consult with a committee of Band Elders to determine which games

are consistent with Band custom and practice. These games shall be listed and defined in the Initial Detailed Gaming Regulations.

- (b) **Class II and Class III Gaming.** Class II and class III gaming on Band Lands is hereby authorized. The Band has the sole proprietary interest in and responsibility for the conduct of any Gaming Enterprise.
 - (1) **Permitted Class II Games.**
 - (i) any game of chance which the Authority and/or the National Indian Gaming Commission has determined to be class II; and
 - (ii) any game of chance for which the Authority has promulgated rules and regulations so that such games are conducted in accordance with Chapter 1 of this Title.
 - (2) **Permitted Class III Games.**
 - (i) video Games of Chance licensed and conducted pursuant to the Compact between the Commission and the State of Minnesota;
 - (ii) blackjack Games licensed and conducted under the terms of the compact between the Commission and the State of Minnesota; and
 - (iii) any other game of chance which is licensed and conducted pursuant to the Compact and for which the Authority has promulgated rules and regulations.
- (c) **Community Charitable Gaming.**
 - (1) **Policy.** It is the policy of the Band to foster and assist Indian Charitable Organizations and the good works they perform for the community. To this end, the Band will allow Indian Charitable Organizations to use certain forms of gaming to raise money for their charitable purposes and to provide a healthy social outlet for members of such groups and their friends. The Authority shall regulate charitable gaming carried out by an Indian Charitable Organization so as to promote the general health and safety of the Band and to assure that such gaming is operated honestly, with high integrity, and in accordance with the highest standards.
 - (2) **Allowable Games.** Indian Charitable Organizations may operate the games of pull-tabs and bingo for the purposes set forth in § 103(c)(1).

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 6(b).

§ 104. Tribal-State Compacts for Class III Gaming Authorized.

- (a) **Corporate Commission Authorized.** The Commission is hereby authorized to negotiate and enter into class III Gaming Compacts with the State of Minnesota to govern the conduct of class III Gaming on Band Lands. Such Compacts and amendments thereto, other than technical amendments as provided in § 104(b), shall not be valid until ratified by the Band Assembly pursuant to 3 MLBS § 2 (f).
- (b) **Technical Amendments.** The Commission may enter into technical amendments pursuant to section 6.12 of the Video Game of Chance Compact or § 7 of the Blackjack Compact or similar section of any subsequent Compact and such technical amendment shall not require Band Assembly approval as provided in § 104(a); however, the shareholders at the shareholders' meetings shall be delivered copies of any technical amendments.
- (c) **Regulations to be in compliance with Compacts.** The Authority shall adopt regulations to provide that such class III Gaming is conducted in compliance with the terms and conditions of such Compact or amendments thereto.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 6(c).

§ 105. Use of Band Lands for Gaming Purposes.

- (a) **Leases.** Leases for all Band Lands for Gaming Activities, or related to Gaming Activity purposes, shall be in full compliance with all applicable laws of the United States and the Band.
- (b) **Indian celebrations.** The use of Band Lands for Indian celebrations or other social events, which includes traditional gaming as part of the celebration or other social event, shall not be subject to federal, state, or local government approval.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 7.

§ 106. Health, Safety, and Environmental Protection.

The construction and maintenance of any facility wherein Gaming Activities are conducted and the operation of Gaming Activities authorized by Section I of this Title, or any other Band law, shall be conducted in a manner which adequately protects the environment and the public health and safety, and shall comply with all applicable Band and federal law concerning such.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 8.

§ 107. Prohibited Activities.

- (a) **Minors prohibited.** It shall be unlawful for any adult to allow a person under the age of eighteen (18) years to participate in Gaming Activities at a Gaming Enterprise, or for such minor to participate in Gaming Activities at a Gaming Enterprise.
- (b) **Cheating prohibited.** It shall be unlawful to conduct or participate in any gaming in a manner which results in cheating, misrepresentation, or other disreputable tactics which distract from a fair and equal chance for all participants, or otherwise affects the outcome of the game.
- (c) **Sale and consumption of alcoholic beverages.** The sale of alcoholic beverages shall not be allowed at any Gaming Enterprise, unless specifically authorized by Band Statute and properly licensed pursuant to applicable Band, federal, and state law.
- (d) **Extension of credit prohibited.** Extension of credit in any form shall not be allowed at any Gaming Enterprise, unless specifically authorized by Band Statute and properly licensed pursuant to applicable Band, federal, and state law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 16.

SUBCHAPTER 3

OWNERSHIP AND REVENUES

Section

201. Ownership of Gaming.

202. Ownership and Use of Class II and Class III Gaming Revenues.

§ 201. Ownership of Gaming.

The Band shall have the sole proprietary interest in and responsibility for conducting any class II and class III Gaming Activities authorized by this Chapter 1 of Title, except to the extent the Band may contract with and license a person or entity to own, operate, or manage a Gaming

Enterprise pursuant to the provisions of IGRA, any Compacts, or as otherwise permitted by applicable law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 9.

§ 202. Ownership and Use of Class II and Class III Gaming Revenues.

(a) **Band Property.**

- (1) All revenues generated from any class II or class III Gaming Activities conducted by any Gaming Enterprise are the sole property of the Band, except as provided for under the terms of any agreement made pursuant to the provisions of IGRA, or as otherwise permitted by Band law.
- (2) Any profits or net revenues from any class II or class III Gaming Activities conducted by any Gaming Enterprise shall be deposited into the Band's general treasury. Upon becoming part of the general treasury, such funds shall lose any identity as gaming revenues, except to the extent necessary to identify them as such in order to comply with applicable law.
- (3) No individual tribal member shall be deemed to have any interest in such profits or net revenues from any class II or class III Gaming Activities conducted by any Gaming Enterprise, provided that the Band may adopt rules for distributing gaming proceeds to Band members on a per capita basis; provided further that such plan must meet the requirements of 25 U.S.C. § 2710 (b)(3). Payments from the general treasury funds to Band members under other Band programs, including those related to health, welfare, education, elderly care, and housing, shall not be deemed "per capita" payments.

(b) **Use of Net Band Revenues.** Net revenues derived from any class II or class III Gaming Activities conducted by any Gaming Enterprise shall be used only for the following purposes:

- (1) To fund Band government operations or programs;
- (2) To provide for the general welfare of the Mille Lacs Band and its members;
- (3) To promote Band economic development; and
- (4) To donate to charitable organizations recognized by the Band.

- (c) **Distribution plan.** There shall be no per capita payments made from any net revenues derived from any class II or class III Gaming Activities conducted by any Gaming Enterprise, unless the distribution plan is approved by the Secretary of Interior pursuant to 25 U.S.C. section 2701 and the payments are made in accordance with such approved plan.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 10.

SUBCHAPTER 4

GAMING REGULATORY AUTHORITY

Section

- 301. Establishment.**
- 302. Board of Directors.**
- 303. Organization.**
- 304. General Powers and Duties of the Authority.**
- 305. Regulations.**
- 306. Monitoring and Investigation.**
- 307. Licensing.**
- 308. Compliance Determinations.**
- 309. Independent Audits.**
- 310. Enforcement.**
- 311. Limitations on Actions.**
- 312. Excluded Persons.**
- 313. Regulatory Role.**
- 314. Budget.**

Historical and Statutory Notes

The title of Band Ordinance 25-13 is “An ordinance amending Section I of Title 15 (Gaming Regulatory Act) to change wording to comply with National Indian Gaming Commission (NIGC) regulations and allow the GRA to extend fingerprinting information to NIGC or the Minnesota Gambling Enforcement for background investigations of key employee or primary management official positions.”

The Preamble of Band Ordinance 25-13 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 307 (Licensing) of Section I of Title 15 (Gaming Regulatory Act) to change wording to comply with National Indian Gaming Commission (NIGC) regulations and allow the GRA to extend fingerprinting information to NIGC or the Minnesota Gambling Enforcement for background investigations of key employee or primary management official positions.”

§ 301. Establishment.

There is hereby established as an agency of the Mille Lacs Band of Ojibwe the “Gaming Regulatory Authority” (hereinafter the “Authority”), which has the power and duty to regulate Gaming matters for the Band as authorized by Band law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(a).

§ 302. Board of Directors.

- (a) The Authority shall be managed by a Board of Directors to be known as the Authority’s “Board.” At all times there shall be at least one Board Member, to be known as “Member(s),” on the Board from each District. The Board shall consist of five (5) Members appointed in the manner and have the terms provided in § 302(b).
- (b) **Appointments process, terms, oath of office.** Each Member shall be appointed using the following process.
 - (1) The Chief Executive shall nominate (2) individuals and submit their names to the Secretary-Treasurer. Within ten (10) calendar days after receipt of the nominations by the Secretary-Treasurer, the Secretary-Treasurer shall ratify one (1) of the two (2) nominees to be a Member of the Board. Such Member shall serve until August 1, 2004. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four years.
 - (2) Each District Representative shall nominate two (2) individuals and submit their names to the Chief Executive. Within ten (10) calendar days after receipt of the nominations by the Chief Executive, the Chief Executive shall ratify one (1) of the two nominees to be a Member of the Board. Such Members shall serve until August 1, 2006. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four years.
 - (3) The Secretary-Treasurer shall nominate two (2) individuals and submit their names to the Chief Executive. Within ten (10) calendar days after receipt of the nominations by the Chief Executive, the Chief Executive shall ratify one (1) of the two (2) nominees to be a Member of the Board. Such Member shall serve until August 1, 2004. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four years.
 - (4) If the Chief Executive or the Secretary-Treasurer do not ratify one from any of the nominations sent to them within the time prescribed, then the Band Assembly shall select such Member by majority vote.

- (5) If any person does not submit a nomination within thirty (30) days after a vacancy has occurred, then the Band Assembly shall nominate two (2) individuals by majority vote and submit their names to the Chief Executive for ratification to the Board. The timing and process for such ratification are as stated in § 302(b)(1) and (4).
- (6) No member shall take office until swearing to the oath of office pursuant to 2 MLBS § 8.

(c) **Qualifications.**

- (1) Members shall be individuals who are of high moral character and integrity, who have a reputation for being honest, fair, objective, and who are recognized as possessing sound judgment.
- (2) Members may not have been convicted of a felony or any gambling related offence.
- (3) No fewer than three Members shall be members of the Band. There shall be at least one Board Member from each of the Band's three Districts.
- (4) Members may not be employed by any Gaming Enterprise, nor may they gamble at any Gaming Enterprise.
- (5) Members shall be subject to the Background Investigations and standards for Primary Management Officials.

(d) **Board Officers, Selection, Duties, Vacancies, Persons who shall not serve as Board Members, Removal.**

- (1) **Officers.** The Board shall have a Chairperson, Vice-Chairperson, and a Secretary.
- (2) **Selection.**
 - (i) **Chairperson.** The Chair of the Authority shall be determined by a majority vote of the Joint Session of the Band Assembly from one of the current Members, or, if there is a vacancy, the individual who is appointed to fill such vacancy.
 - (ii) **Vice-Chairperson.** The Members shall select from among their members, by majority vote, a Vice-Chairperson.
 - (iii) **Secretary.** The Board may select a Member or an employee of the Authority to act as Secretary of the Board. An employee acting as

Secretary at the request of the Board is not a Board Member and has no powers of a Member.

(3) **Board Duties.**

- (i) The Chairperson shall preside over meetings of the Board and the Vice-Chairperson shall preside over meetings of the Board in the absence of the Chairperson. The Secretary shall record in writing the minutes of all Board meetings and all official actions taken by the Authority, and shall notify all persons who by Chapter 1 of this Title require notification of such official actions.
- (ii) In carrying out any function under the provisions of Chapter 1 of this Title all Members shall be governed by the laws of the Band, general policies of the Authority and such regulatory decisions, findings, and determinations as the Authority may by law be authorized to make.
- (iii) Requests or estimates for regular, supplement, or deficiency appropriations on behalf of the Authority may be submitted to the Band Assembly by the Chairperson with the prior approval of the Board.
- (iv) The Chairperson shall delegate authority and assign duties to the Director of the Office of Business Regulation and Compliance sufficient to aid the Authority in fulfilling its regulatory responsibilities. Such assignment and delegation shall comply with Chapter 1 of this Title.
- (v) Members shall serve part-time; however, the Board shall meet a minimum of once per month or more if necessary to fulfill their duties.
- (vi) Members shall attend one or more training seminars or courses related to gaming regulation per year during their terms of membership. Such seminars shall be paid by the Authority. Per diem and other travel expenses shall be paid at the rate of a Senior Executive Staff Band employee.

(4) **Vacancies in Memberships.**

- (i) The Chairperson shall notify the Band Assembly and the Chief Executive of any vacancy on the Board of Directors at least thirty (30) days prior to the end of a term, or, in circumstances other than the end of a term, immediately upon the knowledge that a vacancy will occur.
- (ii) If there is a vacancy on the Board, then the vacancy shall be filled in the same manner as the vacating Member was originally appointed.

- (iii) Any Member, including the Chairperson, appointed to fill a vacancy shall serve for the remainder of the term left vacant; however, any Member may be re-appointed during this time period pursuant to § 302(b).
- (5) **Persons who shall not serve as Board Members.** The following persons shall not serve as Board Members:
- (i) persons in the employ of, or holding any office in or having any business relation with, any business engaged in selling or manufacturing any gaming products or services;
 - (ii) persons who own stocks or bonds in any business engaged in selling or manufacturing any gaming products or services;
 - (iii) persons having any pecuniary interest whatsoever in any business engaged in selling or manufacturing any gaming products or services;
 - (iv) persons having any interest in any business engaged in commerce with or employed by the Corporate Commission. A Member may be engaged in other businesses, vocations, or employment, which do not create a conflict of interest with their duties;
 - (v) persons related to any Gaming Contractor licensed by the Authority, including any principal thereof or Closely Associated Independent Contractor; and
 - (vi) the Chief Executive or members of the Band Assembly.
- (6) **Removal from Membership.** Member may be removed by a super- majority vote of four (4) out of five (5) members of the Joint Session of the Band Assembly. The determination of the Joint Session is final and un-appealable to the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(b).

§ 303. Organization.

(a) **Meetings.**

- (1) **Regular Meetings.** Regular meetings of the Board shall be held at least monthly and upon written notice. The dates of regular meetings shall be set by official action of the Board.

- (2) **Special Meetings.** Special meetings of the Board may be called by the Chairperson with a minimum of forty-eight (48) hours written notice to the Board Members, by the Director with a minimum of forty-eight (48) hours written notice to the Chairperson, or by a majority vote of the Board with forty-eight (48) hours written notice to the Chairperson.
 - (3) **Other.** Either Regular or Special meetings may be called by petition of a majority of a quorum of the Board Members other than the Chairperson upon forty-eight (48) hours written notice to the Chairperson.
- (b) **Quorum.** Three (3) members of the Board shall constitute a quorum.
- (c) **Voting.**
- (1) All actions of the Board shall be taken by majority vote.
 - (2) The Chairperson shall vote only in the following circumstances:
 - (i) to break a tie; and
 - (ii) if necessary, to constitute a quorum in the absence of other Members.
- (d) **Compensation.**
- (1) **Board Meetings.** Members, including the Chairperson, shall be compensated with two-hundred and fifty dollars (\$250) per meeting, not to exceed five hundred dollars (\$500) in one month, except that in the case of a demonstrated emergency, the Chairperson may petition the Secretary-Treasurer for compensation for additional meetings. Mileage and other travel expenses will be compensated on the same terms and conditions as apply to Senior Executive Staff appointees as provided by Band law.
 - (2) **Training.** If Member are not Band government employees and are required to be absent from their employment to attend mandatory training pursuant to § 302(d)(3)(vi) of this Title, then Members shall be compensated at their previously documented hourly rate of pay for each hour that they are in attendance at such training plus mileage and other travel expenses as stated in subparagraph (1) of this paragraph. If Members are Band government employees, then absence from employment will not be deducted from their accrued annual leave and they will be paid as if they were at work plus expenses as stated in subparagraph (1) of this paragraph.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(c).

§ 304. General Powers and Duties of the Authority.

The Authority shall be responsible for ensuring that all Gaming Activities on Band Lands are carried out in compliance with the Indian Gaming Regulatory Act, Band Gaming Laws, the Compacts and other applicable law. To this end, the Authority shall exercise regulatory, not operational authority over any Gaming Enterprise and Charitable Gaming. All management and operational authority over any Gaming Enterprise shall remain with the Corporate Commission separate and distinct from the Authority. The Office of Gaming Regulation and Compliance shall provide staff and administrative support, and office space and equipment, which shall be separate and not under the authority of the Corporate Commission. The Authority may retain such consultants and enter into such contracts as it may deem necessary to carry-out its duties as specified in Chapter 1 of this Title; however, it shall not the hire employees of the Office of Business Regulation and Compliance. In addition, as an agency of Band government, the Authority shall comply with all Band laws, including the Procurement Act, for all contracts including professional services contracts. The Authority may bring such actions as may be necessary to carry-out its duties, including but not limited to, the enforcement of Chapter 1 of this Title and other Band Gaming Laws.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(1).

§ 305. Regulations.

- (a) **Power and duty.** The Authority shall have the power and duty to develop, adopt and promulgate regulations regarding:
- (1) licensing of Gaming Enterprises;
 - (2) licensing and Background Investigations of Key Employees and Primary Management Officials;
 - (3) licensing and Background Investigations of Gaming Suppliers;
 - (4) conducting annual independent audits of all gaming operations of the Band;
 - (5) permitted games and the conduct thereof;
 - (6) standards and criteria for gaming machines and for testing machines;
 - (7) audio and video surveillance standards;
 - (8) minimum internal cash, playing card, chip and token control standards and procedures for gaming operations;

- (9) procedures for compliance with the Bank Secrecy Act and applicable provisions of the Internal Revenue Code;
- (10) resolving gaming related disputes involving patrons and vendors of any Gaming Enterprise, after exhausting all remedies available at the Gaming Enterprise;
- (11) Charitable Gaming as provided in § 103(c) of this Title;
- (12) the prevention and cure of compulsive gambling as provided in Subchapter 8 (§§701-706) of this Title;
- (13) the development and maintenance of a list of excluded Persons as provided in § 312 of this Title;
- (14) related reporting, record-keeping, auditing, investigation and enforcement procedures;
- (15) dispute resolution procedures, including OGR&C employee appeals;
- (16) reasonable fines and other penalties for violations of Chapter 1 of this Title, Band gaming laws, the IGRA, the Compacts and other applicable law; and
- (17) other activities as required by law.

(b) **Rulemaking Process.**

- (1) The Authority shall promulgate the regulations authorized by this § 305 with or without hearing according to the notice and comment process specified herein.
- (2) **Notice of intent to adopt.** The Authority shall give notice of its intent to adopt a regulation by posting a copy of the notice in the Band Government Center and the Community Centers in Districts II and III, and by delivering a copy of the notice by U.S. mail or other appropriate means to the Chief Executive, the Speaker of the Band Assembly, the Solicitor General, the Commissioner for Administration; the Corporate Commissioner; and the manager of any Gaming Enterprise. The notice shall include a copy of the proposed regulation and a description of the nature and effect of the proposed regulation. In addition, the notice shall include the following statements:
 - (i) comments may be submitted on the proposed regulation no later than thirty days from the date of the notice; and
 - (ii) the proposed regulation may be modified if supported by the data and views submitted.

- (3) **Review, adoption, notice of adoption.** The Authority shall review all comments received during the comment period, shall make such changes to the proposed regulation as it deems reasonable and appropriate, and shall approve the regulation by resolution. The Authority shall, by official action, set the effective date of the regulation and publish and post copies of a notice of adoption of the regulation in the same manner as for the notice of intent to adopt the regulation. The notice of adoption shall summarize the final regulation and the changes to the proposed regulation, state the effective date, and announce that free copies of the regulation are available from the Authority. In addition, copies of the notice and the final regulation shall be delivered by U.S. mail or other appropriate means to all Persons who were sent a copy of the notice of intent.
- (4) **Adoption is a compliance determination.** Approval of any regulation by the Authority shall be considered a Compliance Determination for purposes of effecting an appeal pursuant to Subchapter 6 (§§ 501-503) of this Title.
- (c) **Initial Detailed Gaming Regulations.** The Authority shall adopt a set of Initial Detailed Gaming Regulations within 180 days after the first meeting of all of the members of the first Authority Board. Upon approval by the Band Assembly, such regulations shall supersede those currently codified at 15 App. §§ 1.001-18.004 of the MLBS. The Initial Detailed Gaming Regulations shall adopt pursuant to paragraph (b) of this section, except that the Joint Session of the Band Assembly may act to annul such regulations in whole or in part within sixty (60) days of receipt by the Joint Session. Thereafter, any gaming regulation may be annulled by statute. The regulations currently codified will remain in effect until the sixty-day annulment period has lapsed, or for regulations annulled by the Joint Session, until the Joint Session has granted final approval.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(2).

§ 306. Monitoring and Investigation.

- (a) **General.** The Authority shall have the power and duty to monitor and investigate:
 - (1) all Gaming Enterprises for compliance with the IGRA, Band Gaming Laws, the Compacts and other applicable law and to undertake such related investigations and enforcement actions as it deems necessary, including, but not limited to, investigating and evaluating the effectiveness of the Mille Lacs Band gaming regulatory system;
 - (2) to help resolve all gaming related patron and vendor complaints that have not been resolved by agreement of a complainant and the Gaming Enterprise;

- (3) prior to levying fines, granting, denying or suspending licenses;
 - (4) to assure compliance with the rules concerning Charitable Gaming;
 - (5) to assure compliance with compulsive gambling cure and prevention requirements;
 - (6) to develop, maintain and enforce a list of Persons to be excluded from Gaming Enterprises;
 - (7) and take any and all other similar action it deems to be necessary or desirable to carry out the powers and duties granted by this section.
- (b) **Scope of investigations and related activities.** Any investigations and related activities, including, but not limited to electronic and non-electronic searches of credit histories, arrests, and judgements, and electronic surveillance shall be strictly limited to official Authority duties under law. All such investigations and related activities may be undertaken only after review by legal counsel that the scope and subject of any such activities complies with Section I of this Title and other applicable law. Individuals who perform investigations and related activities outside the scope of Chapter 1 of this Title and other applicable law are subject to immediate dismissal and reasonable fines.
- (c) **Access.** The Authority shall have access to all books, files, records, reports, and other data regarding the operation of all Gaming Enterprises, whether in written or electronic form, as it deems necessary or desirable to carry out its legitimate regulatory duties.
- (d) **Surveillance.** The Surveillance Department shall be under the control and supervision of the Authority; however, a Gaming Enterprise shall have access to electronic surveillance output as further defined in the Detailed Gaming Regulations.
- (e) **Cooperation of the Gaming Enterprises with the Authority.** The Authority may:
- (1) require associates of any Gaming Enterprise to compile and provide such data and to testify as to matters within their knowledge concerning the operation of the Gaming Enterprise; and
 - (2) require the associates of any company that is managing a Gaming Enterprise on behalf of the Corporate Commission, or any other Person within the jurisdiction of the Band to comply and provide such data and to testify as to matters within their knowledge concerning the operation of the Gaming Enterprise.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(3).

§ 307. Licensing.

- (a) **General.** The Authority shall promulgate regulations for granting, suspending, and revoking licenses, which are consistent with Band law, the IGRA, and the Compacts regarding matters of licensure.
- (b) **Minimum Licensing Requirements.** It is the policy of the Band that all Gaming Activities and Enterprises be licensed and controlled so as to protect the morals, good order, and welfare of Band members and other persons on Band lands and to preserve the honesty, fairness and integrity of such gaming activities. Accordingly, no person shall engage in any class II or class III Gaming Activities on Band Lands without an appropriate and valid independent class II or class III license issued by the Authority. In addition, the Authority shall issue a separate license to each place, facility, or location on Band Lands where the Band elects to allow class II or class III gaming. The Authority shall perform background investigations and issue licenses for key employees and management officials according to requirements that are at least as stringent as those in 25 C.F.R. parts 556 and 558 which are hereby incorporated into Chapter 1 of this Title, unless otherwise superseded pursuant to an agreement with the NIGC. No license shall be issued that would place the Band in violation of applicable law or the Compacts.
- (c) **Mandatory Licensing Application Provisions and Procedures.**
 - (1) **Notices to applicants.**
 - (i) **Privacy Notice.** The Authority shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. § 2701. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with

the issuance, denial, or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

- (ii) The Authority shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by any applicant.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

- (iii) If there exist any key employees or primary management officials who have filled out forms which did not contain the notice stated in subparagraph (B) of this paragraph, then the Authority shall notify in writing such employees and officials that they shall either:

- (A) Complete a new application form that contains a notice regarding false statements; or
- (B) Sign a statement that contains the notice regarding false statements.

- (2) **Information required from an applicant.** Each application for key employees and primary management officials shall request from each applicant the following information set forth at 25 C.F.R. § 556.4(a)(1)-(14).

- (i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- (ii) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses and residence addresses, and driver's license numbers;
- (iii) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under subparagraph (B) of this paragraph;

- (iv) Current business and residence telephone numbers;
- (v) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- (vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
- (vii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (viii) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;
- (ix) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
- (x) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to subparagraphs (H) or (I) of this paragraph, the criminal charge, the name and address of the court involved and the date and disposition;
- (xi) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- (xii) A photograph;
- (xiii) Any other information the Authority deems relevant; and
- (xiv) Fingerprints consistent with procedures adopted by the Band according to 25 C.F.R. § 522.2(h).

(3) **Mandatory Licensing Procedures.**

- (i) **Fingerprints.** Fingerprints of each applicant for the position of key employee or primary management official will be taken by the Office of Gaming Regulation and Compliance and sent to either Minnesota Gambling Enforcement or the National Indian Gaming Commission. Minnesota Gambling Enforcement or the National Indian Gaming

Commission will send the fingerprints to the FBI for a check of criminal history records information maintained by the FBI and return the results back to the Office of Gaming Regulation and Compliance.

(ii) **Reporting to the NIGC.**

- (A) When the Band employs a primary management official or a key employee, the Band shall forward to the Commission a completed application containing the information listed under § 556.4(a)(1)-(13) of 25 C.F.R.
- (B) Before issuing a license to a primary management official or to a key employee, a tribe shall forward to the Commission an investigative report on each background investigation. An investigative report shall include all of the following:
 - (I) Steps taken in conducting a background investigation;
 - (II) Results obtained;
 - (III) Conclusions reached; and
 - (IV) The bases for those conclusions.
- (C) When the Band forwards its report to the Commission, it shall include a copy of the eligibility determination made under 25 C.F.R. part 558.2.
- (D) If the Band does not license an applicant
 - (I) The Band shall notify the Commission; and
 - (II) May forward copies of its eligibility determination under 25 C.F.R. part 558.2 and investigative report (if any) under 25 C.F.R. part 556.5(b) to the Commission for inclusion in the Indian Gaming Individuals Record System.
- (E) When a key employee of a primary management official begins work at a gaming operation the Band shall:
 - (I) Forward to the Commission a completed application for employment that contains the notices and information listed in 25 C.F.R. parts 556.2, 556.3, and 556.4; and

- (II) Conduct a background investigation under 25 C.F.R. part 556 to determine the eligibility of the key employee or primary management official for continued employment in a gaming operation.
 - (F) Upon completion of a background investigation and a determination of eligibility for employment in a gaming operation under 25 C.F.R. 558.3(a)(2), the Band shall forward a report under 25 C.F.R. 556.5(b) to the Commission within 60 days after an employee begins work or within 60 days of the Chairman's approval of an ordinance under 25 C.F.R. part 523. A gaming operation shall not employ a key employee or primary management official who does not have a license after 90 days.
 - (G) During a 30-day period beginning when the Commission receives a report submitted under 25 C.F.R. 558.3(b), the Chairman may request additional information from a tribe concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period until the Chairman receives the additional information.
- (iii) **Granting a gaming license.**
- (A) If, within the 30-day period described in 25 C.F.R. 558.3(c) of this part, the Commission notifies the Authority that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the Band has provided an application and investigative report to the Commission pursuant to 25 C.F.R. parts 558.3(a) and (b), the Band may go forward and issue a license to such applicant.
 - (B) If, within the 30-day period described in 25 C.F.R. part 558.3(c), the Commission provides the Authority with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to 25 C.F.R. parts 558.3(a) and (b), the Authority shall reconsider the application, taking into account the objections itemized by the Commission. The Authority shall make the final decision whether to issue a license to such applicant.

- (iv) **License Suspension.**
 - (A) If, after the issuance of a gaming license, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for employment under 25 C.F.R. part 558.2, the Commission shall notify the Authority that issued a gaming license.
 - (B) Upon receipt of such notification under subparagraph (I) of this paragraph, the Authority shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.
 - (C) The Authority shall notify the licensee of a time and a place for a hearing on the proposed revocation of a licensee.
 - (D) After a revocation hearing, the Authority shall decide to revoke or to reinstate a gaming license. The Authority shall notify the Commission of its decision.
- (v) **Standard for license denial.** If the Authority, in applying the standards adopted in this ordinance, determines that employment of a person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the Authority shall not employ that person in a key employee or primary management official position.
- (d) **Licensing a privilege.** Any gaming license, or finding of suitability or approval, which is issued by the Authority, shall be deemed a privilege subject to suspension or revocation.
- (e) **Burden on Applicant.** The burden of proving an applicant's qualification to receive any license hereunder is at all times on the applicant. Applicants must accept any risk of adverse public notice, embarrassment or other action which may result from the application process and expressly waive any claim for damages as a result thereof.
- (f) **Applicant Claim of Privilege.** An applicant may claim any privilege afforded by law in connection with a gaming license application or investigation, but a claim of privilege with respect to any testimony or evidence pertaining thereto may constitute sufficient grounds for denial, suspension or revocation.
- (g) **Release of Information.** All persons applying for a license shall agree to release all information necessary in order for the Authority to achieve its goals under Subchapter 1 of this Title, and to furnish such information to the Bureau of Indian Affairs, the

National Indian Gaming Commission, or such other governmental agency as may be required by law or the Compact.

- (h) **License Investigations.** The Authority may employ all reasonable means, including engaging outside services and investigators, and convening hearings, to acquire the information necessary to determine whether or not a license should be issued, suspended or revoked. Applicants and licensees shall also agree to release all information necessary in order for the Authority to achieve its goals under this section and to furnish such information to the Authority, the National Indian Gaming Commission or other agency as may be required by law or the Compact. In conducting a background investigation, the Authority and its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.
- (i) **License Fees.** All Gaming Enterprises or persons applying for a license or the gaming enterprise associated with the license applicant shall be required to pay all applicable license fees and costs when due, including a reasonable deposit for costs incurred in obtaining information in connection with the license application, unless specifically waived in advance by the Authority. Estimates of licensing costs shall be provided to applicants within a reasonable period of time after a request is made. The Authority prior to issuing of the license must receive all fees and costs, unless otherwise provided for in advance. Such fees shall be included in the Initial Detailed Gaming Regulations.
- (j) **Appeals.** All customers, vendors, licensees, and persons who have been denied a license, or had their license suspended or revoked, may appeal pursuant to the procedures detailed in Subchapter 1 of this Title and the Detailed Gaming Regulations.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(4).
Band Ordinance 25-13, § I.

§ 308. Compliance Determinations.

The Authority shall convene to consider a Compliance Recommendation within ten (10) days of its receipt from the Director as required by § 402(b) of this Title, unless, only for issues of licensing, the Authority has received notice of intent to appeal directly to the Court of Central Jurisdiction from the person who has received notice of an adverse licensing recommendation. In addition to the Compliance Recommendation, the Authority may consider any oral or written comments offered by the parties that the Authority deems to be relevant. The Authority may consider any additional information it determines to be necessary and appropriate to reaching a determination. All information considered by the Authority shall become part of the official record of the proceedings. Based on substantial evidence contained in the official record, the

Authority shall make a Compliance Determination by accepting, rejecting or modifying the Compliance Recommendation. The Authority shall clearly state on the record its decision and the reasons therefor. Compliance Determinations shall be effective on the date made, unless the Authority establishes a different effective date. In arriving at any Compliance Determination, the Authority may employ the services of a Hearing Examiner to either make a recommendation for a Compliance Determination or to issue a Compliance Determination on behalf of the Authority.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(5).

§ 309. Independent Audits.

Annual outside auditing by a recognized independent accounting firm shall be conducted of each Gaming Activity for compliance with Band gaming laws, the IGRA, and the Compacts, and the results thereof reported to the Chief Executive, the Band Assembly, and to the extent required by law, the Bureau of Indian Affairs and the National Indian Gaming Commission or another entity. In addition, such audits shall include all contracts related to class II or III gaming, which are in excess of \$25,000, and any other contract of a lesser amount at the discretion of the Authority.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(6).

§ 310. Enforcement.

Any enforcement action taken shall be fair and reasonable under the circumstances, shall be proportionate to the violation, and shall be designed to promote the goals of correction and improvement, unless the violation is such that correction and improvement is not possible. Any enforcement action taken by the Authority must be related to its gaming regulatory function. Any such enforcement action shall be considered to be a Compliance Determination and as such, is appealable pursuant to Subchapter 6 (§§ 501-503) of this Title. In a manner provided by regulation, the Authority may hold such hearings, make such findings, and issue such orders as may be necessary to enforce Band Gaming Laws, the IGRA, the Compacts and other applicable law, including but not limited to:

- (a) revoking or suspending any license issued to an individual, Gaming Supplier, or Gaming Enterprise as allowed by this Act;
- (b) imposing civil fines reasonably proportionate to the activity being punished. Such monies shall be deposited in the Band's general fund. A fine schedule including minimum and maximum fine amounts shall be included in the Initial Detailed Gaming Regulations; and

- (c) adding a Person to a list of Persons excluded from Gaming Enterprises.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(7).

§ 311. Limitations on Actions.

Any enforcement action of Authority or order of the Court of Central Jurisdiction pursuant to any appeal shall be limited as follows:

- (a) The Authority is not authorized to order the cessation of operations of a Gaming Enterprise. Such an order for cessation of operations of a Gaming Enterprise may only occur upon:
 - (1) recommendation by majority vote of the Authority to the Joint Session of the Band Assembly that a Gaming Enterprise be closed citing the specific cause for which closure is being recommended and the conditions under which the cause of closure shall be determined remedied, thereby allowing the reopening of the Gaming Enterprise; and
 - (2) a Super-majority vote of four (4) out of five (5) members of the Joint Session of the Band Assembly ordering closure of a Gaming Enterprise citing the specific cause for which closure is being recommended and the conditions under which the cause of closure shall be determined remedied, thereby allowing the reopening of the Gaming Enterprise.
- (b) All claims by patrons against a Gaming Enterprise shall be limited to a maximum recovery of \$10,000 per claim and a cumulative limit of \$20,000 per patron per year regardless of the number of claims.
- (c) All claims by Vendors or Gaming Suppliers against a Gaming Enterprise shall be limited to the amount of the contract between the Vendor or Gaming Supplier and the Gaming Enterprise that is the subject matter of the claim. However, this provision is subject to the existence of an effective waiver of sovereign immunity pursuant to Band statutes. Under no circumstances shall punitive or other damages, costs, and fees be ordered.
- (d) All claims involving denial, suspension or revocation of a gaming license shall be limited to an award of specific performance of granting or reinstating such license. No monetary award shall be awarded on a license claim.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(8).

§ 312. Excluded Persons.

- (a) **Exclusion List; Creation; Effect.** Subject to the criteria and procedures of this section, the Authority shall establish and maintain an Exclusion List. Individuals whose names appear on the Exclusion List shall not be allowed to enter any Gaming Enterprise or participate in any class II or class III Gaming operated by any Gaming Enterprise whether on behalf of the Band or an Indian Charitable Organization.
- (b) **Duty to Exclude.** It shall be the duty of the Commissioner and the manager of each Gaming Enterprise to exclude or eject from a Gaming Enterprise any Person whose name appears on the Exclusion List. Any associate of a Gaming Enterprise who knows or has reason to know that an excluded Person has entered or is attempting to enter a Gaming Enterprise shall be responsible for notifying appropriate staff and taking such other action as is within the scope of the associate's authority and responsibility to exclude or eject such Person.
- (c) **Distribution and Availability of Exclusion Lists.** The Authority shall maintain a list of Persons to be ejected or excluded from Gaming Enterprises. It shall be the duty of the manager of each Gaming Enterprise to inform the Commissioner in writing of the name of each Person who the manager reasonably believes meets the criteria for placement on the Exclusion List as established by paragraph (d) of this section. The Commissioner, in turn, will provide such names to the Director. The list shall be distributed to each Gaming Enterprise. The list shall be made available to law enforcement agencies if properly subpoenaed or upon request based upon a documented law enforcement need for the list. The following information, to the extent known, shall be provided for each excluded Person:
 - (1) the full name, date of birth, and all alias;
 - (2) a physical description;
 - (3) the effective date the Person's name was placed on the list;
 - (4) a photograph, if available;
 - (5) the Person's occupation and his current home and business address;
 - (6) the specific reason for exclusion;
 - (7) the date, if any, exclusion will expire; and

- (8) such other information as may be deemed necessary by the Director or the Authority.
- (d) **Criteria for Exclusion or Ejection and Placement on an Exclusion List.** The Authority may, based upon the recommendation of the Director, or the Director by Emergency Enforcement Order subject to the provisions of § 402(c) of this Title, place a Person on the Exclusion List pending a hearing by the Authority if:
- (1) such Person has been convicted of a felony in any jurisdiction, any crime that brings into question the person's honesty and integrity, including, but not limited to shoplifting, theft, robbery, burglary, embezzlement, conspiracy to commit a crime, or of a gambling related crime;
 - (2) such Person has violated or conspired to violate any provisions of the Indian Gaming Regulatory Act, Band Gaming Laws, the Compacts and other applicable law;
 - (3) such Person has a notorious or unsavory reputation which would adversely affect public confidence and trust in gaming. The list of which acts constitute such reputation shall be included in the Initial Detailed Gaming Regulations;
 - (4) his or her name appears on any valid and current Exclusion List from another jurisdiction and the reason for exclusion from such other jurisdiction would also be likely to cause exclusion from Band Gaming Enterprises;
 - (5) pursuant to § 706 of this Title, the Person requests to be excluded, by means which allows the Authority to positively identify the person, due to a demonstrable gambling problem.
- (e) **Procedure for Entry of Names.**
- (1) The Director of the Office of Business Regulation and Compliance shall investigate all matters concerning whether or not a Person should be placed on the Exclusion List. Upon a determination that a Person satisfies any of the criteria listed in paragraph (d) of this section the Person shall be deemed a candidate for exclusion, and the Director shall prepare and submit a Compliance Recommendation as to whether the Person's name should be added to the Exclusion List and forwarded to the Authority for action. Such recommendation shall include the identity of the candidate and the nature and scope of the circumstances or reasons that such Person should be placed on the Exclusion List. Pursuant to § 402(b)(2) of this Title, notice of the recommendation must be given to the Person who is the subject of the recommendation and that Person must be informed of the opportunity to offer oral or written testimony to the Authority concerning the recommendation.

- (2) If the Authority or subsequent review by Court of Central Jurisdiction finds in favor of the candidate or excluded Person, then his or her name shall be removed from the excluded list and his or her exclusion shall be terminated as of the date of the action by the Authority or the Court of Central Jurisdiction. If the finding is against the candidate or excluded Person, then his or her name shall be placed on the Exclusion List. If no hearing is requested, then the Person's name shall be placed on the Exclusion List. The Authority may place a Person on the Exclusion List either permanently or temporarily. If a Person is placed on the Exclusion List temporarily, then the Authority shall clearly state the period of time that the Person will be on the Exclusion List.
- (f) **Removal from the Exclusion List.** Any Person who has been placed on the Exclusion List may petition the Authority in writing, not more frequently than annually, that his or her name be removed from the list.
- (g) **Confidential Data.** The Exclusion List shall be classified as Confidential Limited Availability Data.
- (h) **Immediate Removal of Disorderly Persons.** A Gaming Enterprise may immediately remove and bar re-entry of any Person who engages in, or is reasonably believed likely to engage in, disruptive, unruly, or any other behavior which presented a danger to the health, welfare, morals, or the public peace. The manager of the Gaming Enterprise may seek to have such a removed and barred individual placed on the Exclusion List.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(9).

§ 313. Regulatory Role.

The Authority is to serve in a regulatory role, not in an operations role in connection with Gaming Activities conducted by any Gaming Enterprise. The scope of the Authority's authority is limited strictly to the powers and duties specifically enumerated in §§ 304-313 of this Title.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(d)(10).

§ 314. Budget.

The Authority and the Office of Gaming Regulation and Compliance (OGR&C), as established in Subchapter 5 (§§ 401-403) of this Title, shall have budget and expenditure authority

independent of gaming operations. Funding for the Authority and OGR&C shall be adequate to allow the Authority and OGR&C to perform the task of gaming regulation. Such funding for the Authority and OGR&C shall conform to Band appropriation laws and shall not be reliant on the discretion of any management official of a Gaming Enterprise who is subject to regulation of the Authority.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 11(e).

SUBCHAPTER 5

OFFICE OF GAMING REGULATION AND COMPLIANCE (OGR&C); DIRECTOR OF GAMING REGULATION AND COMPLIANCE

Section

401. Establishment; Appointment; Qualifications; Removal and Suspension.

402. Powers and Duties.

403. Regulatory Role.

§ 401. Establishment; Appointment; Qualifications; Removal and Suspension.

- (a) **Establishment.** There is hereby established the Office of Gaming Regulation and Compliance (“OGR&C”) which shall be under the management and supervision of the Director, but subject to the ultimate control of the Authority Board.
- (b) **Appointment of the Director.** The Director shall be appointed by the Board by majority vote and shall report to the Board as the Board requires.
- (c) **Qualifications.** The Director shall possess the following qualifications:
 - (1) experience and training in management and regulatory enforcement of sufficient scope, depth and relevancy to enable him/her to direct the work of the OGR&C;
 - (2) high moral character with no conviction for a felony or any gambling related offense;
 - (3) freedom from any conflict of interest created by outside business interest or occupation; and
 - (4) licensure as a Primary Management Official.

- (d) **Removal, suspension.** The Director may be removed for cause as manifest by a Super-majority vote of four (4) out of five (5) of the Board Members including the Chairperson. In addition, if the Director is charged in any competent jurisdiction with a felony or any gambling related crime, the Chairperson shall immediately suspend the Director with or without pay until the charges have been resolved.
- (e) **Vacancy.** If there is a vacancy for any reason, then the Chairperson shall immediately appoint an Interim Director, until the Board convenes to appoint a Director.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 12(a).

§ 402. Powers and Duties.

- (a) **Director.**
 - (1) **Staff.** The OGR&C shall provide staff, administrative and office support to the Authority. The Director shall appoint one or more Gaming Compliance Officers, to whom he or she may delegate certain duties of the Director, and hire such other employees or consultants as may be necessary to perform the duties as set forth herein. All employee suspensions and terminations are appealable to the Authority Board.
 - (2) **Day-to-day operations.** The Director shall be responsible for the day-to-day operations of the OGR&C, subject to the authority of the Board, including:
 - (i) enforcement of all applicable gaming laws and regulations at all Gaming Enterprises;
 - (ii) investigations of any matter within the scope of authority of the Authority as described in Subchapter 4 (§§ 301-314) of this Title, including but not limited to performing or causing to be performed background investigations necessary to determine if any applicant for a Primary Management Official, Key Employee or Gaming Supplier license required by this Act, or the gaming regulations adopted by the Authority, meets the applicable licensure criteria;
 - (iii) assisting the Authority in defending all decisions where an adversely impacted license applicant files an appeal to such adverse decision.
 - (iv) investigating and evaluating the effectiveness and efficiency of the Mille Lacs Band gaming regulatory system and recommending changes;

- (v) investigating and monitoring all Gaming Enterprises for compliance with the IGRA, Band Gaming Laws, the Compacts and other applicable law upon receiving any credible report of a violation of gaming statutes or regulations, or at random or periodic intervals, with or without prior notification to the management or associates of the subject Gaming Enterprise;
 - (vi) investigating all gaming related patron and vendor complaints concerning a Gaming Enterprise that have not been resolved between the complainant and the Gaming Enterprise after full exhaustion of attempts to amicably settle the matter and make a Compliance Recommendation to the Authority concerning the matter;
 - (vii) investigating and monitoring all Gaming Enterprises for compliance with compulsive gambling cure and prevention requirements;
 - (viii) investigating and monitoring for compliance with all rules concerning Charitable Gaming;
 - (ix) investigating, monitoring and assisting in all matters concerning the maintenance and enforcement of a list of Persons to be excluded from Gaming Enterprises;
 - (x) at the request of the Authority, assisting the Authority in:
 - (A) the execution of any authorized enforcement actions;
 - (B) the preparation and defense of any appeal taken from any Compliance Determination; and
 - (C) the preparation of the annual budget which is to be submitted to the Band Assembly for direct appropriation for Authority activities; and
 - (xi) hiring and supervising the Gaming Compliance Officers and other personnel of the OGR&C.
- (3) **Access to data and files of any Gaming Enterprise.** The Director shall have access to all areas, records, files and data of any Gaming Enterprise, and may interview any associate of any Gaming Enterprise with respect to matters relating to the operation of any Gaming Enterprise without first notifying the associate's supervisor or any other employee of any Gaming Enterprise, and shall have access to the results of Background Investigations carried out pursuant to Subchapter 4 (§§ 301-314) of this Title or the gaming regulations adopted by the Authority.

- (4) **Gaming Compliance Officers.** Gaming Compliance Officers shall be considered Key Employees for purposes of Background Investigations and licensing. Gaming Compliance Officers shall be responsible for performing investigations and otherwise assisting the Director in carrying out the duties specified herein. The Director may delegate to Gaming Compliance Officers any of the Director's powers and duties, except the power to appoint Gaming Compliance Officers.
 - (5) **Security of records and access to offices.** The OGR&C shall take all measures necessary to safeguard and track records. In addition, access to the offices of the OGR&C shall be strictly controlled to assure security and maintain adequate separation of gaming regulation and gaming operations.
- (b) **Compliance Recommendations, notice, time and content.**
- (1) **Compliance Recommendation.** The Director shall submit a Compliance Recommendation to the Board Members and the persons stated in subparagraph (2) of this paragraph, which shall summarize the facts and state whether or not the license should be granted, suspended, or revoked, whether or not the documented practices and procedures satisfy the relevant statutes and regulations, and recommend appropriate corrective, enforcement, or other responsive action.
 - (2) **Notice, time, content.** The Director shall submit the written Compliance Recommendation within five (5) days to each Board Member, the Corporate Commissioner, the licensee or license applicant if the Compliance Recommendation involves a license denial, suspension, or revocation, and any vendor or patron who is the subject of a Compliance Recommendation for each investigation carried out pursuant to § 307(h) of this Title. The notice shall state that the Compliance Recommendation will be heard by the Authority Board prior to issuance of a Compliance Determination pursuant to § 308 of this Title and contain a copy of the Authority's procedures for issuing of a Compliance Determination. In addition, the notice shall state that all parties have the right to counsel at the party's own expense, the right to appear before the Authority, the right to review the record upon which the initial Compliance Recommendation was made, and may supplement the record with additional information if deemed relevant by the Board.
- (c) **Emergency Enforcement Orders.** If the Director finds that there is an immediate threat to Band assets, or that probable cause exists to believe that a crime has been, or is about to be committed, the Director may, by emergency order, immediately impose any legitimate regulatory enforcement and/or corrective action within the scope of the Authority's authority which is proportional to the harm such emergency order seeks to remedy. Emergency orders shall be in writing, and the Director shall immediately forward any such order, along with a supporting Compliance Recommendation to the Authority and the Corporate Commissioner in the manner provided by § 312(d) of

this Title. The Authority shall act on any such order and Compliance Recommendation in the same manner as provided in § 312(e) of this Title, except that it shall convene to consider the order and Compliance Recommendation within three (3) days of having received the emergency order and supporting Compliance Recommendation. In any such proceeding, the Compliance Determination of the Authority shall supersede the Director's emergency order.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 12(b).

§ 403. Regulatory Role.

The OGR&C is to serve in a regulatory role, not in an operations role. As such, the scope of the Director's authority is limited strictly to the powers and duties specifically enumerated in Subchapter 5 (§§ 401-403) of this Title and to those powers and duties specifically granted to the Authority in Subchapter 4 (§§ 301-314) of this Title, which have been specifically delegated to the Director by the Authority, including those limitations of actions described in § 311 of this Title.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 12(c).

SUBCHAPTER 6

APPEALS

Section

501. Who May Appeal.

502. Effecting an Appeal.

503. Procedure on Appeal; Standard of Review.

§ 501. Who May Appeal.

- (a) A Person who has been denied reversal of an adverse Compliance Recommendation or denied any other relief requested from the Authority may appeal such Compliance Determination or final enforcement order to the Court of Central Jurisdiction.
- (b) A Person who has received a Compliance Recommendation that recommends a license denial, suspension, or revocation may directly appeal to the Court of Central

Jurisdiction. If a person takes such action, then he or she waives any right to receive a Compliance Determination from the Authority.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 13(a).

§ 502. Effecting an Appeal.

Any appeal shall be filed with the Court of Central Jurisdiction and must be filed within twenty (20) days after the date of the issuance of a Compliance Determination, final order, or a Compliance Recommendation that denies, suspends, or revokes a license.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 13(b).

§ 503. Procedure on Appeal; Standard of Review.

- (a) The Court of Central Jurisdiction shall sit without a jury, confine its review to the Authority record, and apply an abuse of discretion standard. The filing of briefs and oral argument must be made in accordance with the Band rules governing civil cases.
- (b) The Court of Central Jurisdiction may affirm the Compliance Determination or order of the Authority, or it may remand the case for further proceedings, or reverse the Compliance Determination or order if the substantial rights of the petitioner have been prejudiced because the decision is:
 - (1) in excess of the statutory authority or jurisdiction of the Authority;
 - (2) made upon unlawful procedure;
 - (3) unsupported by any evidence; or
 - (4) plainly in error.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 13(c).

SUBCHAPTER 7

DATA PRIVACY

Section

601. General Rule.

602. Confidential Data.

603. Temporary Classification.

604. Information Sharing.

§ 601. General Rule.

All Authority Data shall be public unless classified by a Band statute, regulation or order, or by federal law, as Confidential Data. The Authority shall adopt and promulgate detailed and thorough rules pursuant to data privacy in its Initial Detailed Gaming Regulations.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 14(a).

§ 602. Confidential Data.

- (a) **Confidential Limited Availability Data.** The following Authority Data shall be Confidential Limited Availability Data under these restrictions:
- (1) Background Investigations Information; available only in a case where information revealed through a Background Investigation is, in whole or in part, the basis for an adverse decision regarding a license applicant or license renewal. The information contained in such Background Investigation shall be made available to the license applicant or the Person seeking license renewal if so requested;
 - (2) Confidential Financial Information;
 - (3) Compliance Recommendations Information; available only to the extent that the Authority adopts a Compliance Recommendation or accepts the record developed by the Director supporting a Compliance Recommendation, all information so accepted or relied upon shall be public;
 - (4) Personnel Data; and

- (5) whether or not a Person is on the Exclusion List; however, limited only to the receipt of such information by the Person who is on the Exclusion List or his/her agent pursuant to 25 C.F.R. § 515.8.
- (b) **Confidential Restricted Availability Data.** The following Authority Data shall be Confidential Restricted Availability Data under these regulations:
- (1) Financial Information on a Gaming Enterprise;
 - (2) Information on a Pending Compliance Recommendation;
 - (3) Information on a Pending License Application;
 - (4) Security Information; and
 - (5) Trade Secret Information.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 14(b).

§ 603. Temporary Classification.

- (a) **Authority.** The Authority may, on its own motion or at the request of the Director, temporarily classify Authority Data as Confidential Data if it determines that:
- (1) the data for which the temporary classification is sought has been treated as private or confidential by the Corporate Commission or other agencies of Mille Lacs Band Government or by the federal government; or
 - (2) a compelling need exists for immediate temporary classification, which if not granted could adversely affect the public interest or the health, safety or well-being of the subject of the data.
- (b) **Ratification.** No later than July 1 of each year the Authority shall submit all temporary classifications then in effect to the Corporate Commissioner for review. The Corporate Commissioner may comment on the classification and the Authority shall consider the comments of the Corporate Commissioner in reaching its decision. If the Corporate Commissioner fails to act by July 1 of the year following the submission of a temporary classification hereunder, then the classification shall thereupon expire.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 14(c).

§ 604. Information Sharing.

The Authority may, on its own motion or at the request of the Director, share information with any regulatory agency of another gaming jurisdiction or any law enforcement agency where it is determined that sharing such information is in the best interest of the Band, where the agency with whom the information is to be shared assures that the shared information will remain confidential, if the other gaming jurisdiction agrees to share such information with the Band, and if sharing the information is not contrary to any applicable law.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 14(d).

SUBCHAPTER 8

COMPULSIVE GAMBLING

Section

701. Policy.

702. Program Content and Responsibility.

703. Counseling Resources; Referrals.

704. Associate Training.

705. Patron Information and Education.

706. Exclusion.

§ 701. Policy.

While gambling is an enjoyable form of entertainment for most people, the Mille Lacs Band recognizes that some people may have difficulty with keeping their gambling within reasonable limits. The Band is committed to helping these people to deal constructively with their actual or potential gambling problems, and in furtherance of this goal it has established the Mille Lacs Problem Gambling Prevention Program described in this section.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(a).

§ 702. Program Content and Responsibility.

The Problem Gambling Prevention Program shall consist of the following elements: (1) a referral system; (2) associate training; (3) patron information and education; and (4) exclusion. The Director, in consultation with the Commissioner of Corporate Affairs subject to the review and approval of the Authority, shall develop and update as necessary a Problem Gambling Prevention Program. The Commissioner, subject to the oversight of the Director, shall implement the program in all Gaming Enterprises.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(b).

§ 703. Counseling Resources; Referrals.

The referral system of the Problem Gambling Prevention Program shall be based on a current, computerized directory of organizations and individuals that have a reputation for providing effective assistance for individuals with gambling problems. The system shall include a process for referring patrons who seek help with such problems to resources listed in the directory and for encouraging them to take advantage of such resources.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(c).

§ 704. Associate Training.

Problem Gambling Prevention Training shall be provided to all casino associates who have regular contact with patrons. This training program, which shall be provided as part of the associate orientation program and require subsequent periodic in-service refreshers, shall include but not be limited to the following:

- (a) a description of the Problem Gambling Prevention Program;
- (b) the nature, extent and effects of compulsive gambling;
- (c) how to recognize the warning signs of potential and actual gambling problems; and
- (d) techniques for intervening constructively with problem gamblers.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(d).

§ 705. Patron Information and Education.

- (a) Patrons shall be provided information on the Problem Gambling Prevention Program by signs and in promotional materials as provided in this section.
- (b) **Signs.** Signs that clearly and in plain language inform patrons about how to obtain assistance in dealing with gambling problems shall be prominently posted at the following locations in each Gaming Enterprise:
 - (1) at each entrance and exit;
 - (2) at any check cashing facility within the Gaming Enterprise;
 - (3) near any ATM cash machines at the Gaming Enterprise; and
 - (4) any other locations as determined by the Commissioner of Corporate Affairs.
- (c) **Promotional Material.** The Problem Gambling Prevention Program shall contain guidelines and suggestions for including messages about responsible gambling, the need to get help for problem gambling behavior, and the sources of such help. The Director shall monitor the promotional materials and campaigns of each Gaming Enterprise to ensure that such messages are being included to the extent appropriate and, in cooperation with the Commissioner take such action as may be necessary to correct any deficiencies in this regard.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(e).

§ 706. Exclusion.

At the request of a patron who states that he or she may have a gambling problem, or at the request of an immediate family member of a patron who alleges that the patron has a gambling problem, the patron's name may be added to the Exclusion List established pursuant to § 312(d) of this Title.

Historical and Statutory Notes

Source:

Band Ordinance 44-03, § 15(f).

CHAPTER 2

DEPARTMENT OF ATHLETIC REGULATION

Subchapter

9. Athletic Regulation

Section

801

SUBCHAPTER 9

ATHLETIC REGULATION

Section

801. Professional Boxing and Mixed Martial Arts.

802. Purpose of the Department of Athletic Regulation.

803. Jurisdiction of the Department of Athletic Regulation Commission.

804. Department of Athletic Regulation Commission.

805. No Right of Action.

806. Medical Standards.

Historical and Statutory Notes

The title of Band Ordinance 45-06 is “An ordinance amending Title 15 of the Mille Lacs Band Statutes Annotated to add Section II entitled Department of Athletic Regulation in order to regulate professional athletic activities held on the Mille Lacs Band of Ojibwe reservation.”

The Preamble of Band Ordinance 45-06 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe the following act for the purpose of establishing a statutory system for the effective regulation of professional athletic activities on the Mille Lacs Band of Ojibwe Reservation to be called the Department of Athletic Regulation (the “DAR” or “Department”); establishing an independent regulatory authority called the Boxing Commission (the “Commission”); and for other athletic activities.”

The title of Band Ordinance 05-07 is “An ordinance to amend title 15 of the Mille Lacs Band Statutes Annotated, section II entitled Department of Athletic Regulation to correct nomination/ratification language for Boxing commission members under Section 3 of the statute.”

The Preamble to Band Ordinance 05-07 provides: “It is enacted by the Band assembly of the Mille Lacs Band of Ojibwe for the purpose of correcting language specifying the nomination and ratification of Boxing commission members.”

The title of Band Ordinance 23-07 is “An Ordinance to amend title 15 of the Mille Lacs Band Statutes Annotated, Section II entitled Department of Athletic Regulation (DAR) to change the language of Section

2, to make changes to Section 4(b), (i), (j), and to add (k), and to change the language of Section 6 (Medical Standards).”

The Preamble to Band Ordinance 23-07 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of changing the language of Section 2, to change the appointment process of the Boxing Commissioners in Section 4(b), the compensation language in Section 4(i), the training language in Section 4(j), to add Section 4(k), and to change the language of Section 6 (Medical Standards). The language of Section 4, subsections (a), (c), (d), (e), (f), (g), and (h) shall remain unchanged.

The title of Band Ordinance 05-11 is “An ordinance amending Section II of Title 15 of the Mille Lacs Band Statutes Annotated entitled Department of Athletic Regulation (DAR) in order to amend the funding split language and to broaden the regulatory function over amateur mixed martial arts (MMA). These changes are intended to strengthen the Department of Athletic Regulation and broaden the safety and protection of unarmed combatants who participate in amateur mixed martial arts on Band lands.”

The Preamble to Band Ordinance 05-11 provides:

“The Band Assembly of the Mille Lacs Band of Ojibwe believes it is in the best interest of the Band to strengthen its role as a regulator of unarmed combatant events in order to ensure to the best of their ability the safety of all unarmed combatants who participate in such events on Band lands. This amendment serves to also better protect Band Members and others who attend the amateur and professional athletic events on Band lands.

“This amendment also amends the five (5) member Board previously referred to as the “Boxing Commission” to hereafter be referred to as the “DAR Commissioners” or Athletic Regulation Commission. The Department of Athletic Regulation Commission serves as the Band regulator to ensure the continuing impartial and safe regulation of all events involving unarmed combatants on Band lands.”

Section I(1) of Band Ordinance 05-11 provides: “The Department of Athletic Regulation is hereafter included in Section II of Title 15 of the Mille Lacs Band Statutes Annotated.”

The title of Band Ordinance 16-13 is “An Ordinance amending Section II of Title 15 (Department of Athletic Regulation) to permit the DAR to regulate professional boxing and MMA for another tribe or tribal entity in order to promote professionalism and safety in the sport within Indian country.”

The Preamble to Band Ordinance 16-13 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 802 of Section II of Title 15 (Department of Athletic Regulation) to permit the DAR to regulate professional boxing and MMA for another tribe or tribal entity in order to promote professionalism and safety in the sport within Indian country.”

§ 801. Professional Boxing and Mixed Martial Arts.

- (a) This Subchapter and the Rules and Regulations shall constitute the entire amateur mixed martial arts (MMA) and professional athletic activity laws and regulations of the Band. No amateur MMA or professional boxing, sparring, MMA or other professional athletic exhibitions shall be conducted, held or given on the Mille Lacs

Band of Ojibwe Reservation except in accordance with the provisions of this Subchapter and the Rules and Regulations adopted by the Department of Athletic Regulation (DAR).

- (b) The DAR, through its Executive Director and Athletic Regulation Commission, shall have the right to amend these regulations as the need arises. The Band Assembly reserves the right to approve or revoke any changes to the DAR Rules and Regulations prior to implementation within 90 days of receipt from the DAR. If no formal action is taken within the 90 days, the change(s) is/are automatically adopted.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 1.

Band Ordinance 05-11, § I(2), Exh. A, § 801.

§ 802. Purpose of the Department of Athletic Regulation.

- (a) With the exception of subsection (b) below, the purpose of the Department of Athletic Regulation (DAR) is to regulate, administer and oversee the conduct of amateur MMA and all professional athletic events held on the Mille Lacs Band of Ojibwe Reservation, including professional boxing and MMA, for the purpose of promoting the health, safety and welfare of all persons engaged in such activities, and that of Band Members and the public. The DAR shall regulate such events through its Executive Director and Athletic Commissioners.
- (b) The Department of Athletic Regulation (DAR) may, upon invitation from another tribe or tribal entity, regulate a boxing or MMA event on behalf of such tribal entity for the purpose of promoting professionalism and safety in the sport. All such regulatory activities conducted on behalf of another tribe or tribal entity must be compensated by that tribe or tribal entity that extended the invitation to the DAR in an amount that is fair and reasonable, but no less than \$2,000.00 per event. Any monies earned in this manner by the DAR shall be deposited in the Band's general fund within five (5) days of the event.
- (c) The DAR Executive Director and at least two (2) Commission members shall be present at each place where amateur MMA or professional boxing, MMA or other professional athletic activities are to be held pursuant to the provisions of this Subchapter. If the Executive Director is unable to attend such event due to illness or for any other reason, the Athletic Regulation Commission members shall oversee the regulation of such event.

Historical and Statutory Notes

Source:

- Band Ordinance 45-06, § 2.
- Band Ordinance 23-07, § I.
- Band Ordinance 05-11, § I(2), Exh. A, § 802.
- Band Ordinance 16-13, § I.

§ 803. Jurisdiction of the Department of Athletic Regulation Commission.

The Department of Athletic Regulation Commission shall have and is hereby vested with the sole discretion, management, control and jurisdiction over all amateur and professional athletic exhibitions to be conducted, held or given on the Mille Lacs Band of Ojibwe Reservation and other Band Lands including boxing, sparring, mixed martial arts (MMA) as well as all licensing of any and all persons who participate in such activities. All gyms, clubs, training camps and other organizations that provide training facilities for persons preparing for participation in professional boxing, sparring or mixed martial arts (MMA) on Band lands are also included.

Historical and Statutory Notes

Source:

- Band Ordinance 45-06, § 3.
- Band Ordinance 05-11, § I(2), Exh. A, § 803.

§ 804. Department of Athletic Regulation Commission.

- (a) The DAR shall be managed by an Executive Director and a five-member Board referred to as the Athletic Regulation Commission. At all times, there shall be at least one Commissioner from each District serving on the Athletic Regulation Commission. The Commission shall consist of five (5) members appointed in the following manner and having staggered terms as provided in paragraph (b) of this section.
 - (1) The Commission shall have oversight of the Executive Director.
- (b) **Appointments process, terms, oath of office.** Each Commissioner shall be appointed using the following process:
 - (1) The Chief Executive shall nominate two (2) individuals and submit their names to the Secretary-Treasurer. Within ten (10) calendar days after receipt of the nominations by the Secretary-Treasurer, the Secretary-Treasurer shall ratify one (1) of the two (2) nominees to be a Member of the Board. Such Member shall serve until September 30, 2008. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.

- (2) The Secretary-Treasurer shall nominate two (2) individuals and submit their names to the Chief Executive. Within ten (10) calendar days after receipt of the nominations by the Chief Executive, the Chief Executive shall ratify one (1) of the two (2) nominees to be a Member of the Board. Such Member shall serve until September 30, 2008. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
- (3) Each District Representative shall nominate two (2) individuals and submit their names to the Chief Executive. Within ten (10) calendar days after receipt of the nominations by the Chief Executive, the Chief Executive shall ratify one (1) of the two (2) nominees to be a Member of the Board. Such Board Member shall serve until September 30, 2009. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four (4) years.
- (4) If the Chief Executive or Secretary-Treasurer does not ratify one individual from any of the nominations sent to them within the time prescribed, then the Band Assembly shall select such Member by majority vote.
- (5) If any person does not submit a nomination within thirty (30) days after a vacancy has occurred, then the Band Assembly shall nominate two (2) individuals by majority vote and submit their names to the Chief Executive for ratification to the Board. The timing and process for ratification are as stated in paragraphs (b)(1) and (b)(4) of this section.
- (6) No person shall take office until swearing to the oath of office pursuant to 2 MLBS § 8.

(c) **Qualifications of Commissioners are as follows:**

- (1) Commissioners shall be individuals who are of high moral character and integrity, who have a reputation for being honest, fair, objective, and who are recognized as possessing sound judgment.
- (2) It is preferred that Commissioners be individuals with an interest in boxing or mixed martial arts or be individuals that have a background in amateur boxing or wrestling.
- (3) Commissioners may not have been convicted of a felony within ten (10) years of the date of their appointment. In addition, any Commissioner convicted of a felony during their term shall be automatically removed for such cause.
- (4) No fewer than three (3) Commissioners shall be Band members. There shall be at least one Commissioner from each of the Band's three districts.

- (5) If the Corporate Commission or a MLBO gaming enterprise acts as promoter in any type of amateur or professional athletic event to be regulated by the DAR, any Commissioner employed by the Corporate Commission or a MLBO gaming enterprise, will not participate in the regulation of such event.
 - (6) Commissioners shall be subject to criminal background investigations. The Office of Solicitor General shall conduct the criminal background investigation for the Athletic Commission and shall return results of such investigation to the Band Assembly within ten (10) business days of notice of ratification.
- (d) **Commission officers.**
- (1) The Commission shall have a Chairperson, Vice-Chairperson and a Secretary.
 - (2) The Chairperson of the Commission shall be determined by a majority vote of the elected officials and selected from one of the current Commissioners or, if there is a vacancy, the individual who is appointed to fill such vacancy.
 - (3) The Vice-Chairperson shall be selected by the Commission by majority vote.
 - (4) The Secretary shall be selected by the Commission by majority vote.
- (e) **Commission Duties and Responsibilities.**
- (1) The Chairperson shall preside over meetings of the Commission and the Vice-Chairperson shall preside over meetings of the Commission in the absence of the Chairperson. The Secretary shall record in writing the minutes of all Board meetings and all official actions taken by the Commission. A copy of the minutes may be provided to the Band Assembly and Chief Executive upon request.
 - (2) Commissioners shall serve part-time, however, the Commission shall meet a minimum of once per month, but no more than twice per month
 - (3) Each Commissioner is responsible for reading and reviewing the DAR Rules and Regulations as well as this subchapter within thirty (30) days of his/her appointment to the Commission.
 - (4) As part of each Commissioner's training, he/she shall, on a staggered basis, assist in pre-bout and post-bout duties and responsibilities, including weigh-ins, licensing and payouts. Commissioners shall also work to ensure that all rules and regulations are followed during each athletic event.
 - (5) As part of each Commissioner's training, he/she shall attend boxing inspection training at their earliest opportunity after appointment.

Commissioners are also expected to take advantage of other types of trainings that may be offered locally to enhance their knowledge of the unarmed combat that they are appointed to regulate.

(f) **Vacancies.**

- (1) The DAR or Chairperson shall notify the Band Assembly and Chief Executive of any vacancy on the Commission at least thirty (30) days prior to the end of term or, in circumstances other than the end of a term, immediately upon the knowledge that a vacancy will occur.
- (2) If there is a vacancy on the Commission, then the vacancy shall be filled in the same manner as the vacating Commissioner who was originally appointed.
- (3) Any Commissioner, including the Chairperson, appointed to fill a vacancy shall serve for the remainder of the vacant term, however, any Commissioner may be re-appointed during this time period pursuant to paragraph (c) of this section.

(g) No elected official shall serve as a Commissioner during his/her term of office.

(h) **Removal.** A Commissioner may be removed by a super-majority vote of four (4) out of five (5) members of the elected officials. The determination of the elected officials is final and unappealable to the Court of Central Jurisdiction.

(i) **Compensation.** Commissioners shall be paid Two Hundred and Fifty and No Dollars (\$250.00) per meeting, not to exceed Five Hundred and No Dollars (\$500.00) in one month. Mileage and other travel expenses will be compensated on the same terms and conditions as applicable to Senior Executive Staff appointees as provided by Band law. Commissioner stipend is restricted to his/her attendance at official meetings of the Commission.

(j) **Training.**

- (1) Commissioners may attend one or more training seminars per year during their terms of membership. These seminars shall be sanctioned by the Association of Boxing Commissioners (“ABC) or other professional boxing or martial arts organization.
- (2) Commissioners attending mandatory training seminars, who are also employees of the Band government, shall be compensated at their documented rate of pay for each hour they are in attendance at such training plus mileage and other travel expenses as stated in paragraph (i) in this section. Commissioners, who are also employees of the Band government, shall not be required to use his/her accrued annual leave, but will be paid as if they were at work.

- (3) Commissioners who are not Band government employees and are required to be absent from their employment to attend training pursuant to subsection (j)(1) above, shall be compensated at their previously documented hourly rate of pay, but not to exceed \$15.00 per hour, for each hour that they are in attendance at such training plus mileage and other travel expenses as stated in subparagraph (2) above.
- (k) **Funding and Collection of Fees.** The DAR shall be funded as follows:
- (1) From ticket sales of unarmed combat events, there shall be a 10/90 split between the DAR and the appropriate Grand Casino budget. Ten percent (10%) shall be assigned to the DAR budget through OMB.
 - (2) The remaining budget requirements will be funded from Taxation Revenue to be appropriated each and every year by Band government budget process.
 - (3) If an unarmed combat promoter chooses to negotiate a “4-wall” deal with Grand Casino, he/she shall be responsible for marketing and sale of tickets for such unarmed combat event. The promoter shall negotiate with Grand Casino as to all other matters except regulation. For regulation of a “4-wall” event, the promoter shall pay 10% of the gross ticket sales to the DAR, but not to exceed \$2,500.00. If any comp has the potential to impact the regulation fee, the promoter shall be restricted to “comp” no more than 10% of the gross ticket sales. Within ten (10) days of the event, the promoter shall file a written report with the DAR listing all ticket sales and comps of the “4-wall” event.
 - (4) The minimum payment to the DAR from a promoter for the regulation of any unarmed combat 4-wall event shall be \$1,000.00. Such amount shall be paid according to the timeline established under the DAR rules and regulations.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 4.
Band Ordinance 05-07.
Band Ordinance 23-07, § II.
Band Ordinance 05-11, § I(2), Exh. A, § 804.

§ 805. No Right of Action.

This Subchapter does not create any right, cause of action or benefit enforceable at law or in equity by any individual, entity or party against the Mille Lacs Band of Ojibwe, its representatives, elected officials, Athletic Department or the Commission.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 5.
Band Ordinance 05-11, § I(2), Exh. A, § 805.

§ 806. Medical Standards.

For each World Championship Event and all televised events, there shall be two (2) ringside physicians present at each professional boxing or mixed martial arts (MMA) or other professional athletic event. For all other non-championship athletic events or non-televised events, there shall be one (1) ringside physician present. At the earliest opportunity, all such physicians shall be registered with and attend training sessions with the American Association of Professional Ringside Physicians (“AAPRP”). All ringside physicians must be licensed in the United States and have professional qualifications suitable to professional boxing or mixed martial arts. Accepted medical background includes, but is not limited to, internal medicine, neurology or general practice. All regulations adopted with the passage of this Subchapter shall be followed.

Historical and Statutory Notes

Source:

Band Ordinance 45-06, § 6.
Band Ordinance 23-07, § III.
Band Ordinance 05-11, § I(2), Exh. A, § 806.

TITLE 16 - CORPORATIONS

<u>Chapter</u>	<u>Section</u>
1. General Provisions	1
2. Business Corporations	1001
3. Nonprofit Corporations	2001

Historical and Statutory Notes

The Preamble to Band Statute 1202-MLC-16 It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians a statute to establish the position of the Commissioner for Corporate Affairs

“The District III Representative introduced the following bill on the seventh day of March 1991

“It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians a statute to establish the position of the Commissioner for Corporate Affairs; to set forth the ministerial duties of the Commissioner for Corporate Affairs; to establish and empower the Corporate Commission; and to set

forth the corporate duties of the Commissioner for Corporate Affairs; to provide for the Incorporation of Business Corporations, Corporate Body Politic Business Corporations, Non-Profit Corporations, and Nonprofit Corporate Body Politic Corporations.

“Whereas, in 1981, the Non-Removable Mille Lacs Band of Chippewa Indians, in a historic step, adopted a form of government based on the principle of division of powers; and

“Whereas, that form of government has proven to be highly satisfactory, but experience with a large body of law which was necessary to establish the system has revealed a number of flaws and ambiguities; and

“Whereas, as times change, Band statutes must necessarily be modified to adopt to those changing times; and

“Whereas, the Band Assembly has determined to improve Band government by adopting an entire Corporate Code, revising and replacing the former Code, NOW THEREFORE BE IT ENACTED BY THE BAND ASSEMBLY:”

Band Statute 1202-MLC-16, § 1 and 2 provide.

“Section 1. Purpose: the purpose of this Act is to promote the general welfare of the Non-Removable Mille Lacs Band of Chippewa Indians and its members by establishing a more effective form of commerce, to control the economic affairs of the Band, and to establish, operate, and incorporate such commercial enterprises as is may deem to be for the benefit of the Mille Lacs Band of Chippewa Indians.

“Section 2: Scope of the Amending Provisions. The previously enacted chapter 16 (1077-MLC-16) is hereby repealed. This Act shall become effective the day after its passage.

The Title of Band Ordinance 23-06 is “An ordinance to amend Title 16 (Corporations) of the Mille Lacs Band of Ojibwe statutes to delete or change sections that are in direct conflict with the intent and scope of Title 15 (Gaming Regulatory Act) which was adopted on August 19, 2003.”

The Preamble of Band Ordinance 23-06 provides: “It is enacted by the Band Assembly for the purpose of correcting Title 16(Corporations) so as to delete or change sections that are in direct conflict with the intent and scope of Title 15 (Gaming Regulatory Act).”

The Title of Band Ordinance 04-15 is “An Ordinance to amend Mille Lacs Band Statute, §101 of Title 16 – Corporations, pursuant to legislative process articulated in 3 MLBS §16.”

The Preamble of Band Ordinance 04-15 provides: “Be it enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of formally renaming the Corporate Commission of the Mille Lacs Band of Chippewa Indians to Mille Lacs Corporate Ventures.”

Cross References

Gasoline excise tax, imposition, *see* 22 MLBS § 303.

General powers and duties of Commissioner of Finance, *see* 22 MLBS § 104.

Public service contracts, award to businesses organized under this title, *see* 7 MLBS § 1.

Sales and use taxes, *see* 22 MLBS § 501 et seq.

CHAPTER 1

GENERAL PROVISIONS

<u>Subchapter</u>	<u>Section</u>
1. Commissioner for Corporate Affairs	1
2. Corporate Commission	101

SUBCHAPTER 1

COMMISSIONER FOR CORPORATE AFFAIRS

Section

1. Establishment.
2. Appointment.
3. Removal.
4. Powers and Duties.
5. Ministerial Powers and Duties of Commissioner for Corporate Affairs.
6. Commissioner's Orders.

§ 1. Establishment.

The position of Commissioner for Corporate Affairs is established.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 3.

§ 2. Appointment.

The Commissioner for Corporate Affairs shall be appointed to a four-year term by the Chief Executive with the ratification of the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 3.01.

§ 3. Removal.

The Commissioner for Corporate Affairs may be removed from office pursuant to 3 MLBS § 25.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 3.02.

§ 4. Powers and Duties.

The Commissioner for Corporate Affairs shall have the powers and duties which are set forth in this title.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 3.03.

§ 5. Ministerial Powers and Duties of Commissioner for Corporate Affairs.

The Commissioner for Corporate Affairs shall have the following ministerial duties:

- (a) To provide an effective and efficient system of administration for the Mille Lacs Band Business Corporation Act (16 MLBS § 1001 et seq.);
- (b) To provide an effective and efficient system of administration for the Mille Lacs Band Nonprofit Corporation Act (16 MLBS § 2001 et seq.);
- (c) To provide reporting and accounting for a Net Revenue Allocation Schedule in a form prescribed by the Band Assembly pursuant to 16 MLBS § 108.
- (d) To provide an effective and efficient administrative system to license and certify Foreign Corporations under the Band's Commercial Licensing Statute (18 MLBS § 1 et seq.).

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 4.
Band Ordinance 23-06, § 1.

Cross References

Corporate powers and duties of Corporate Commissioner, *see* 16 MLBS § 111.

§ 6. Commissioner's Orders.

- (a) The Commissioner of Corporate Affairs shall issue regulations to accomplish the duties under 16 MLBS § 5, in the form of Commissioner's Orders.
- (b) Such Commissioner's Orders shall be subject to annulment by the Band Assembly pursuant to 3 MLBS § 17.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 4.06.

Cross References

Corporate Orders, *see* 16 MLBS § 111.

SUBCHAPTER 2

CORPORATE COMMISSION

Section

- 101. Establishment.**
- 102. Purposes.**
- 103. Board Composition.**
- 104. Corporate Body Politic.**
- 105. Limited Liability and Indemnification.**
- 106. Enumerated Powers.**
- 107. Corporate Charter.**
- 108. Net Revenue Allocation Schedule.**
- 109. Sovereign Immunity.**
- 110. Assets and Liabilities of the Band.**
- 111. Corporate Powers and Duties of Corporate Commissioner.**

Cross References

Gaming activity regulation, *see* 15 MLBS 101.

§ 101 Establishment.

- (a) The Corporate Commission of the Mille Lacs Band of Chippewa Indians is established as a Corporate Body Politic. As a Corporate Body Politic, the Corporate Commission is both a political subdivision, clothed by federal and tribal law with all

the privileges and immunities of the Band, except as expressly limited; and a separately chartered corporation under 16 MLBS § 1101(1)).

- (b) Effective October 28, 2014, the name under which the Corporate Commission conducts business shall now be “Mille Lacs Corporate Ventures”, and all powers, duties, privileges, and immunities of the Corporate Commission provided for in Band statutes and laws shall inure to such entity; and all references in Band laws, resolutions, or policy to the Corporate Commission shall include such entity.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 5, § 8.
Band Ordinance 04-15.

§ 102. Purposes.

The Corporate Commission of the Mille Lacs Band of Chippewa Indians is established:

- (a) to exercise a more effective form of commerce;
- (b) to control and manage the economic affairs of the Mille Lacs Band of Chippewa Indians;
- (c) to establish and operate commercial enterprises as it may deem to be for the benefit of the Mille Lacs Band of Chippewa Indians;
- (d) to make sound business and economic development decisions in a way that is insulated from day to day political considerations faced by Band elected leaders;
- (e) to avail the Band of the benefits of engaging in business and economic development without subjecting the Band government, qua government, to erosion of Band sovereignty.
- (f) to insulate Band assets from liability assumed in the conduct of business operations of the Corporate Commission or as wholly owned subsidiary thereof.
- (g) for any other purposes set forth in the Charter or bylaws of the Corporate Commission that are not inconsistent with this title.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 5.01.

§ 103. Board Composition.

The Corporate Commission shall be comprised of 5 board members and the Commissioner of Corporate Affairs. The 5 Board members shall be nominated by the Chief Executive and ratified by the Band Assembly. The term of the Commissioner of Corporate Affairs serving at the time of the passage of Band Statute 1202-MLC-16 shall continue until January 1, 1993. The Commissioners serving at the time of the passage of Band Statute 1202-MLC-16 shall remain as Commissioners. Any vacancies existing on the Corporate Board shall be filled in a manner prescribed in this title. The Corporate Board shall select one among its members who shall serve a four-year term, one who shall serve a three-year term, two who shall serve a two-year term, and one who shall serve a one-year term; subsequent appointments after these terms expire shall run for four years. At least one member of the Board shall be a Band member residing in District 1; At least one member of the Board shall be a Band member residing in District 2; At least one member of the Board shall be a Band member residing in District 3. The Commissioner of Corporate Affairs shall serve as Chairman and Chief Operating Office of the Corporation. The Board shall elect from its membership an individual to serve as the Chief Financial Officer of the Corporation.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 5.02.

Cross References

Designation of Band Districts, *see* 2 MLBS § 11.

§ 104. Corporate Body Politic.

The Corporate Commission shall be incorporated as a Corporate Body Politic under 16 MLBS § 1101(1)). As a Corporate Body Politic the Corporate Commission shall have membership who will consist of the Chief Executive, the Speaker of the Band Assembly, and the District Representative instead of shareholders.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-1 6, § 8.01.

§ 105 Limited Liability and Indemnification.

The corporation shall indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding either civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, agent or employee acting on behalf of the corporation, or is or was serving at the request of the

corporation as a director or officer of another enterprise or corporation, against expenses, including attorneys' fees and costs, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, to the extent that such person is not otherwise indemnified. The corporation shall not be required to indemnify such director, officer, agent or employee if independent counsel shall determine pursuant to a judicial decision in any such action, suit or proceeding or independently, in case of settlement, that the director, officer, agent or employee has failed to act in good faith and with that degree of diligence, care and skill which ordinary prudent people would exercise under similar circumstances in like positions.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 5.03.

§ 106. Enumerated Powers.

The Corporate Commission shall have the following specifically enumerated powers:

- (a) To engage in business and economic development endeavors;
- (b) To enter any contracts or agreements necessary for business or economic development endeavors;
- (c) To enter into compacts or other agreements with the state or federal government in furtherance of engaging in business or economic development endeavors;
- (d) To form and incorporate wholly owned subsidiary business corporations and non-profit corporations with separate articles, bylaws, board of directors, and separate employer ID numbers to conduct the affairs of individual business endeavors and to insulate the Corporate Commission from liability of those endeavors.
 - (1) The Corporate Commission shall name the Board of Directors of any such corporations and shall approve the articles and bylaws of any such corporation before the same shall become effective.
 - (2) The Corporate Commission may assign any duties and/or privileges of any agreement or contract the commission has entered into to a wholly owned subsidiary whose specific business purpose is relevant to such agreement or contract.
- (e) Any additional powers necessary to carry out the purposes as described in 16 MLBS § 102. Such additional powers will be specifically enumerated in a set of articles and bylaws to be approved by the Corporate Commission. Such articles and bylaws and any additional specifically enumerated powers contained therein must be approved by the Band Assembly resolution before they shall become effective.

Historical and Statutory Notes

Source:

Band Statute 1 202-MLC-16, § 5.04.
Band Ordinance 23-06, § 2.
Section 2 of Band Ordinance 23-06.

Cross References

Tobacco products, Corporate Commission as sole licensed distributor, *see* 22 MLBS § 201 et seq.

§ 107. Corporate Charter.

The Corporate Commission shall draft and approve a charter and bylaws to be submitted to the Band Assembly for ratification. Such a charter and bylaws shall not become effective until ratified by the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 6.

§ 108. Net Revenue Allocation Schedule.

The Band Assembly shall by resolution adopt a Net Revenue Allocation Schedule to provide for the allocation of net revenue from any business conducted by the corporation or any wholly owned subsidiary of the Corporate Commission.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 7.

Cross References

Reporting and accounting, *see* 16 MLBS § 5.

§ 109. Sovereign Immunity.

- (a) The Corporate Commission shall be clothed by federal and tribal law with all the privileges and immunities of the Band, except as specifically limited by this title, including sovereign immunity from suit in any state, federal or tribal court. Nothing contained in this title shall be deemed or construed to be a waiver of sovereign immunity by the Corporate Commission from suit which may be waived only in accordance with this title, the Corporate Commission Charter and Bylaws. Nothing

in this chapter shall be deemed or construed to be a consent of the Corporate Commission to the jurisdiction of the United States or of any State or of any tribe or band other than the Band with regard to the business or affairs of the corporation.

(b)

(1) Sovereign immunity of the Corporate Commission may be waived only by formal resolution of the corporation's Board of Directors. Waivers of sovereign immunity are disfavored and shall be granted only when necessary to secure a substantial advantage or benefit to the corporation.

(2) Any waiver of sovereign immunity shall be specific and limited as to:

(A) duration,

(B) the grantee,

(C) the particular transaction,

(D) definite property or funds, if any, of the corporation,

(E) a particular court having jurisdiction pursuant thereto and

(F) the law that shall be applicable thereto.

(3) Any express waiver of sovereign immunity by resolution of the Board, shall not be deemed a consent to the levy of any judgment, lien or attachment upon property of the corporation other than property specifically pledged or assigned, or a consent to suit in respect of any land within the Reservation or a consent to the alienation, attachment or encumbrance of any such land.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 9.

§ 110. Assets and Liabilities of the Band.

The corporation shall have only those assets specifically assigned to it by the Band or acquired in its name by the Band or the Corporate Commission or on its own behalf. Nothing in this chapter nor any activity of the corporation shall implicate or in any way involve the credit or assets of the Band or obligate the Band for the obligations of this corporation except for any liability or obligation specifically assumed in writing.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § 10.

§ 111. Corporate Powers and Duties of Corporate Commissioner.

- (a) The Corporate Commissioner shall have the following corporate duties and responsibilities:
 - (1) The Commissioner of Corporate Affairs shall serve as the Chief Operating Officer of the Corporate Commission.
 - (2) The Corporate Commissioner or the Corporate Commissioners Designee shall serve as the Chief Operating Officer, or, if at the discretion of the Corporate Commissioner, as a Board Member other than the CEO of any wholly owned subsidiary.
 - (3) Any additional powers necessary to carry out the purposes as described in this chapter.
- (b)
 - (1) The Commissioner of Corporate Affairs shall issue regulations and other directives to accomplish the above duties in the form of Corporate Orders.
 - (2) Such Corporate Order shall be subject to voidance by a majority of the Board members of the Corporate Commission provide that such rejection of the Corporate Order on made in writing by a majority of board members within 3 days of the board members receiving constructive notice of the corporate order.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16, § li.

Cross References

Commercial practices, Investigations, *see* 18 MLBS § 11 [Digitizer's note: Section not in digital copy].

Rules and regulations, *see* 18 MLBS § 4.

Commissioner's Orders, *see* 16 MLBS § 6.

Ministerial powers and duties of Commissioner for Corporate Affairs, *see* 16 MLBS § 5.

Power to license commercial entities, *see* 18 MLBS § 101.

Prohibition of introduction of goods, *see* 18 MLBS § 208.

Use of information, commercial practices, *see* 18 MLBS § 9.

CHAPTER 2
BUSINESS CORPORATIONS

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	1001
2. Incorporation and Article	1101

Cross References

Administration system, *see* 16 MLBS § 5.

SUBCHAPTER 1
GENERAL PROVISIONS

<u>Section</u>
1001. Citation.
1002. Definitions.
1003. Regulations.
1004. Foreign Corporations.

§ 1001 Citation.

This chapter may be cited as the “Mille Lacs Band of Chippewa Indians business corporation act.”

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 1.

§ 1002. Definitions.

For the purposes of this chapter, and any regulations issued pursuant to this chapter, unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

- (a) **“Address”** means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which shall not be a post office box.

- (b) **“Affiliate”** means a person that directly or indirectly controls, is controlled by, or is under common control with, a specified person.
- (c) **“Band”** means the Mille Lacs Band of Chippewa Indians.
- (d) **“Board of Directors, or Board”** means the group of persons vested with the general management of the internal affairs of the corporation, regardless of how designated.
- (e) **“Bylaws”** means the code adopted for the regulation or management of the internal affairs of the corporation, regardless of how designated.
- (f) **“Class”**, when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
- (g) **“Closely held corporation”** means a corporation which does not have more than 35 shareholders.
- (h) **“Commissioner”** means the Commissioner of Corporate Affairs.
- (i)
 - (1) **“Corporation”** means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
 - (2) **“Corporation”** means a corporation that is governed by this chapter.
- (j) **“Director”** means a member of the board.
- (k) **“Foreign corporation”** means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under this chapter.
- (l) **“Good faith”** means honesty in fact in the conduct of the act or transaction concerned.
- (m) **“Intentionally”** means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person “intentionally” violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

- (n) A person **“knows”** or has **“knowledge”** of a fact when the person has actual knowledge of it. A person does not “know” or have “knowledge” of a fact merely because the person has reason to know of the fact.
- (o) **“Officer”** means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to this chapter.
- (p) **“Organization”** means a domestic or foreign corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
- (q) **“Person”** includes a natural person and an organization.
- (r) **“Principal executive office”** means an office where the elected or appointed chief executive officer of a corporation has an office. If the corporation has no elected or appointed chief executive officer, “principal executive office” means the registered office of the corporation.
- (s) **“Publicly held corporation”** means a corporation that has a class of equity securities registered pursuant to section 12 (15 U.S.C.A. § 781), or is subject to section 15(d) (15 U.S.C.A. § 78o(d)), of the Securities Exchange Act of 1934.
- (t) **“Registered office”** means the place within the jurisdiction of the Band designated in the articles of a corporation as the registered office of the corporation.
- (u) **“Related corporation”** of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.
- (v) **“Share”** means one of the units, however designated, into which the shareholders’ proprietary interests in a corporation are divided.
- (w) **“Shareholder”** means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
- (x) **“Subsidiary”** of a specified corporation means a corporation having more than 50 percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations, by the specified corporation.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 2.

§ 1003. Regulations.

- (a) The Commissioner of Corporate Affairs shall promulgate regulations with regard to Business Corporations governing:
 - (1) powers (not inconsistent with other applicable law);
 - (2) board of directors;
 - (3) officers;
 - (4) shares, shareholders;
 - (5) loans, obligations, distribution;
 - (6) merger, exchange, transfer;
 - (7) dissolution;
 - (8) extension;
 - (9) corporate registration; and
 - (10) actions against corporations.
- (b) Such regulations shall closely parallel the Minnesota Business Corporation Act (MINN. STAT. § 302A.001 et seq.).

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 14.

§ 1004 Foreign Corporations.

Foreign corporations conducting business within the jurisdiction of the Band need not file with the Commissioner as a foreign corporation. A foreign corporation shall be required to acquire a license to conduct business within the jurisdiction of the Band as is provided by 18 MLBS § 1 et seq.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 15.

SUBCHAPTER 2

INCORPORATION AND ARTICLES

Section

- 1101. Purposes.**
- 1102. Incorporators.**
- 1103. Articles.**
- 1104. Corporate Name.**
- 1105. Reserved Name.**
- 1106. Registered Office; Registered Agent.**
- 1107. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.**
- 1108. Amendment of Articles.**
- 1109. Filing Articles.**
- 1110. Effective Date of Articles.**
- 1111. Presumption; Certificate of Incorporation.**

§ 1101. Purposes.

- (a) A corporation may be incorporated under this chapter for any business purpose or purposes, unless some other statute of Band requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

- (b) A corporation may also be incorporated under this chapter as a Corporate Body Politic. A Corporate Body Politic shall be the same in all respects as any other corporation incorporated under this chapter except that:
 - (1) Such Corporate Body Politic shall also be a political subdivision of the Band conferred with all privileges and immunities contained as such; and
 - (2) Such Corporate Body Politic will have members instead of shareholders. The members shall consist of the Chief Executive, the Speaker of the Band Assembly, and the District Representatives of Districts 1, 2 and 3. These individuals shall serve as members in their official capacity as elected leaders of the Mille Lacs Band of Chippewa Indians.
 - (3) There shall be no voting rights for the members. The members shall have the power to appoint or delegate the appointment of the board of director of such Corporate Body Politic in accord with applicable Band Statutes.
 - (4) Incorporators shall not be required for the Corporate Body Politic. The Corporate Body Politic shall be established in accord with Band Statute, or as delegated by Band Statute.

- (5) Any revenues from such a Corporate Body Politic shall inure to the Mille Lacs Band of Chippewa Indians to be allocated for governmental purposes and the general welfare of the Mille Lacs Band people, according to a net revenue allocation schedule to be enacted by the Band.
- (6) Such Corporate Body Politic shall not be required to pay any fees listed in this chapter.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 3.

Cross References

Corporate Commission as Corporate Body Politic, *see* 16 MLBS §§ 101, 108.

§ 1102. Incorporators.

One or more natural persons of full age may act as incorporators of a corporation by filing with the Commissioner articles of incorporation for the corporation.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 4.

§ 1103. Articles.

- (a) **Required provisions.** The articles of incorporation shall contain:
 - (1) The name of the corporation;
 - (2) The address of the registered office of the corporation and the name of its registered agent, if any, at that address;
 - (3) The aggregate number of shares that the corporation has authority to issue; and
 - (4) The name and address of each incorporator.
- (b) **Statutory provisions that may be modified only in articles.** The following provisions govern a corporation unless modified in the articles:
 - (1) A corporation has general business purposes;

- (2) A corporation has perpetual existence and certain powers;
- (3) The power to adopt, amend, or repeal the bylaws is vested in the board;
- (4) A corporation must not allow cumulative voting for directors;
- (5) The affirmative vote of a majority of directors present is required for an action of the board;
- (6) A written action by the board taken without a meeting must be signed by all directors;
- (7) The board may authorize the issuance of securities and rights to purchase securities;
- (8) All shares are common shares entitled to vote and are of one class and one series;
- (9) All shares have equal rights and preferences in all matters not otherwise provided for by the board;
- (10) The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes;
- (11) The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, and determine the value of nonmonetary consideration;
- (12) Shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued;
- (13) A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board;
- (14) A shareholder has certain preemptive rights, unless otherwise provided by the board;
- (15) The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a majority of the voting power of all shares entitled to vote;
- (16) Shares of a corporation acquired by the corporation may be reissued;

- (17) Each share has one vote unless otherwise provided in the terms of the share; and
 - (18) A corporation may issue shares for a consideration less than the par value, if any, of the shares.
- (c) **Statutory provisions that may be modified either in articles or in bylaws.** The following provisions govern a corporation unless modified either in the articles or in the bylaws:
- (1) Directors serve for an indefinite term that expires at the next regular meeting of shareholders;
 - (2) The compensation of directors is fixed by the board;
 - (3) A certain method must be used for removal of directors;
 - (4) A certain method must be used for filling board vacancies;
 - (5) If the board fails to select a place for a board meeting, it must be held at the principal executive office;
 - (6) A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting;
 - (7) A majority of the board is a quorum for a board meeting;
 - (8) A committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present;
 - (9) The board may establish a special litigation committee;
 - (10) The chief executive officer and chief financial officer have specified duties, until the board determines otherwise;
 - (11) Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so;
 - (12) The board may establish uncertificated shares;
 - (13) Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions;

- (14) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten-days' notice is required for a meeting of shareholders;
 - (15) The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting;
 - (16) The board may fix a date up to 60 days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting;
 - (17) Indemnification of certain persons is required; and
 - (18) The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement.
- (d) **Optional provisions; specific subjects.** The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board, fixing a greater than majority director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:
- (1) The members of the first board may be named in the articles;
 - (2) A manner for increasing or decreasing the number of directors may be provided;
 - (3) Additional qualifications for directors may be imposed;
 - (4) Directors may be classified;
 - (5) The day or date, time, and place of board meetings may be fixed;
 - (6) Absent directors may be permitted to give written consent or opposition to a proposal;
 - (7) A larger than majority vote may be required for board action;
 - (8) Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer;
 - (9) Additional officers may be designated;

- (10) Additional powers, rights, duties, and responsibilities may be given to officers;
 - (11) A method for filling vacant offices may be specified;
 - (12) A certain officer or agent may be authorized to sign share certificates;
 - (13) The transfer or registration of transfer of securities may be restricted;
 - (14) The day or date, time, and place of regular shareholder meetings may be fixed;
 - (15) Certain persons may be authorized to call special meetings of shareholders;
 - (16) Notices of shareholder meetings may be required to contain certain information;
 - (17) A larger than majority vote may be required for shareholder action;
 - (18) Voting rights may be granted in or pursuant to the articles to persons who are not shareholders;
 - (19) Corporate actions giving rise to dissenter rights may be designated;
 - (20) The rights and priorities of persons to receive distributions may be established; and
 - (21) A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles.
- (e) **Optional provisions: generally.** The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.
- (f) **Powers need not be stated.** It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-1 6A, § 5.

§ 1104. Corporate Name.

- (a) **Requirements; prohibitions.** The corporate name:

- (1) Shall be in the English language, the Ojibwe language, or in any other language expressed in English letters or characters;
 - (2) Shall contain the word “corporation, incorporated,” or “limited,” or shall contain an abbreviation of one or more of these words, or the word company” or the abbreviation “Co.” if that word or abbreviation is not immediately preceded by the word “and” or the character “&;”;
 - (3) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;
 - (4) Shall be distinguishable upon the records in the office of the Commissioner from the name of a domestic corporation or limited partnership whether profit or nonprofit, or a foreign corporation or limited partnership authorized or registered to do business within the jurisdiction of the Band, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved or provided for in Band Statute or regulations promulgated pursuant to this chapter unless exempted by the Commissioner.
- (b) **Determination.** The Commissioner shall determine whether a name is “distinguishable” from another name for purposes of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 6.

§ 1105. Reserved Name.

- (a) **Who may reserve.** The exclusive right to the use of a corporate name otherwise permitted by this chapter may be reserved by:
 - (1) a person doing business within the jurisdiction of the Band under that name;
 - (2) a person intending to incorporate under this chapter;
 - (3) a domestic corporation intending to change its name;
- (b) **Method of reservation.** The reservation shall be made by filing with the Commissioner a request that the name be reserved. If the name is available for use by the applicant, the Commissioner shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods.
- (c) **Transfer of reservation.** The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the

applicant for whom the name was reserved by filing with the Commissioner a notice of the transfer and specifying the name and address of the transferee.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-1 6A, § 7.

§ 1106. Registered Office; Registered Agent.

- (a) **Registered office.** A corporation shall continuously maintain a registered office within the jurisdiction of the Band. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.
- (b) **Registered agent.** A corporation may designate in its articles a registered agent. The registered agent may be a natural person residing within the jurisdiction of the Band, a domestic corporation, or a foreign corporation authorized to transact business within the jurisdiction of the Band. The registered agent must maintain a business office that is identical with the registered office.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 8.

§ 1107. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.

- (a) **Statement.** A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the Commissioner a statement containing:
 - (1) The name of the corporation;
 - (2) If the address of its registered office is to be changed, the new address of its registered office;
 - (3) If its registered agent is to be designated or changed, the name of its new registered agent;
 - (4) If the name of its registered agent is to be changed, the name of its registered agent as changed;
 - (5) A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

- (6) A statement that the change of registered office or registered agent was authorized by resolution approved by the affirmative vote of a majority of the directors present.
- (b) **Resignation of agent.** A registered agent of a corporation may resign by filing with the Commissioner a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates 30 days after the notice is filed with the Commissioner.
- (c) **Change of business address or name of agent.** If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the Commissioner a statement as required in subsection (a), except that it need be signed only by the registered agent, need not be responsive to paragraph (3) or (6) of subsection (a), and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 9.

§ 1108. Amendment of Articles.

The articles of a corporation organized under this chapter may be amended in a manner prescribed by the Commissioner.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 10.

§ 1109 Filing Articles.

Articles of incorporation and articles of amendment shall be filed with the Commissioner.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 11.

§ 1110. Effective Date of Articles.

Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the Commissioner accompanied by a payment of \$75, which includes a \$45 incorporation fee in addition to the \$30 filing fee.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 12.

§ 1111. Presumption; Certificate of Incorporation.

When the articles of incorporation have been filed with the Commissioner and the required fee has been paid to the Commissioner, it is presumed that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the Commissioner shall issue a certificate of incorporation to the corporation, but this presumption does not apply against Band in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 13.

CHAPTER 3

NONPROFIT CORPORATIONS

Subchapter

1. General Provisions

2. Incorporation and Articles

Section

2001

2101

Cross References

Administration system, *see* 16 MLBS § 5.

SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 2001. Citation.
- 2002. Definitions.
- 2003. Scope of Chapter.
- 2004. Regulations.
- 2005. Foreign Corporations.

§ 2001. Citation.

This chapter may be cited as the Mule Lacs Band of Chippewa Indians nonprofit corporation act.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § I.

§ 2002. Definitions.

For purposes of this chapter, the terms in this section have the meanings given them, unless the language or context clearly shows that a different meaning is intended.

- (a) **“Address”** means mailing address, including a zip code, except that in the case of a registered office, address means the mailing address and the actual office location, which may not be a post office box.
- (b) **“Band”** means the Mille Lacs Band of Chippewa Indians.
- (c) **“Board of Directors”** or **“Board”** means the group of persons vested with the general management of the internal affairs of a corporation, regardless of how they are identified.
- (d) **“Bylaws”** means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
- (e) **“Commissioner”** means the Commissioner of Corporate Affairs.
- (f) **“Corporation”** means a corporation that is governed by this chapter. A corporation may not:

- (1) be formed for a purpose involving pecuniary gain to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a tribal government or subdivision thereof; and
 - (2) pay dividends or other pecuniary remuneration, directly or indirectly, to its members, other than to members that are nonprofit organizations or subdivisions, units, or agencies of the United States or a tribal government or a subdivision thereof.
- (g) **“Director”** means a member of the board.
- (h) **“Foreign corporation”** means a corporation that is formed under laws other than the laws of this state.
- (i) **“Good faith”** means honesty in fact in the conduct of an act or transaction
- (j) **“Member”** means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.
- (k) **“Members with voting rights”** or **“voting members”** means members or a class of members that has voting rights with respect to the purpose or matter involved.
- (l) **“Officer”** means a person elected, appointed, or otherwise designated as an officer by the board or the members, and a person considered elected an officer under this chapter.
- (m) **“Organization”** means a domestic or foreign business or nonprofit corporation, partnership, limited partnership, joint venture, association, trust, estate, enterprise, or other legal or commercial entity.
- (n) **“Registered office”** means the place within the jurisdiction of the Band designated in the articles of a corporation as the registered office of the corporation.
- (o) **“Written action”** means a written document signed by all of the persons required to take the action. The term also means the counterparts of a written document signed by any of the persons taking the action. A counterpart is the action of the persons signing it, and all the counterparts are one written action by all of the persons signing them.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 2.

§ 2003. Scope of Chapter.

- (a) **General.** This chapter does not apply to cooperative associations, public cemetery corporations and associations, and private cemeteries.
- (b) **Religious corporations.** This chapter does not apply to a religious corporation unless it is formed under this chapter or elects to be governed by this chapter.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 3.

§ 2004 Regulations.

- (a) The Commissioner of Corporate Affairs shall issue regulations with regard to Nonprofit Corporations governing the:
 - (1) powers (not inconsistent with other applicable law);
 - (2) organization, bylaws;
 - (3) board of directors;
 - (4) officers;
 - (5) members;
 - (6) loans, obligations;
 - (7) merger, consolidation, transfer;
 - (8) dissolution; extension; corporate registration;
 - (9) actions against corporations; and
 - (10) special provisions.
- (b) These regulations shall closely parallel the Nonprofit Corporations Act' enacted by the State of Minnesota. MINN. STAT. § 317A.001 et seq.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 15.

§ 2005. Foreign Corporations.

Foreign corporations conducting business within the jurisdiction of the Band need not file with the Commissioner as a foreign corporation. A foreign corporation shall be required to acquire a license to conduct business within the jurisdiction of the Band as is provided by 18 MLBS § 1 et seq.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 2005.

SUBCHAPTER 2

INCORPORATION AND ARTICLES

Section

2101. Purposes.

2102. Incorporators.

2103. Articles.

2104. Private Foundations; Provisions Considered Contained in Articles.

2105. Corporate Name.

2106. Reserved Name.

2107. Registered Office; Registered Agent.

2108. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.

2109. Amendment of Articles.

2110. Filing; Effective Date of Articles.

2111. Presumption; Certificate of Incorporation.

§ 2101. Purposes.

- (a) A corporation may be incorporated under this chapter for any lawful purpose, unless another statute requires incorporation for a purpose under a different law. Unless otherwise limited in its articles, a corporation has a general purpose of engaging in any lawful activity. A corporation engaging in conduct that is regulated by another statute is subject to the limitations of the other statute.
- (b) A corporation may also be incorporated under this chapter as a Nonprofit Corporate Body Politic. A Nonprofit Corporate Body Politic shall be the same in all respects as any other corporation incorporated under this chapter except that:

- (1) Such Nonprofit Corporate Body Politic shall also be a political subdivision of the Band conferred with all privileges and immunities contained as such; and
- (2) Such Nonprofit Corporate Body Politic will have members instead of shareholders. The members shall consist of the Chief Executive, the Speaker of the Band Assembly, and the District Representatives of Districts 1, 2 and 3. These individuals shall serve as members in their official capacity as elected leaders of the Mille Lacs Band of Chippewa Indians.
- (3) There shall be no voting rights for the members. The members shall have the power to appoint or delegate the appointment of the board of directors of such Nonprofit Corporate Body Politic in accord with applicable Band Statutes.
- (4) Incorporators shall not be required for the Nonprofit Corporate Body Politic. The Corporate Body Politic shall be established in accord with Band Statute, or as delegated by Band Statute.
- (5) Any revenues from such a Nonprofit Corporate Body Politic shall inure to the Mille Lacs Band of Chippewa Indians to be allocated for governmental purposes and the general welfare of the Mille Lacs Band people, according to a net revenue allocation schedule to be enacted by the Band.
- (6) Such Nonprofit Corporate Body Politic shall not be required to pay any fees listed in this chapter.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 4.

§ 2102. Incorporators.

One or more adult natural persons may act as incorporators of a corporation by filing articles of incorporation for the corporation with the Commissioner.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 5.

§ 2103. Articles.

- (a) **Required provisions.** The articles of incorporation must contain:
 - (1) the name of the corporation;

- (2) the address of the registered office of the corporation and the name of its registered agent, if any, at that address;
 - (3) the name and address of each incorporator; and
 - (4) a statement that the corporation is organized under this chapter.
- (b) **Statutory provisions that may be modified only in articles.** The following provisions govern a corporation unless modified in the articles:
- (1) a corporation has a general purpose of engaging in any lawful activity;
 - (2) the power to initially adopt, amend, or repeal the bylaws is vested in the board;
 - (3) cumulative voting for directors is prohibited;
 - (4) a written action by the board taken without a meeting must be signed by all directors; and
 - (5) members are of one class.
- (c) **Statutory provisions that may be modified in articles or bylaws.** The following provisions govern a corporation unless modified in the articles or bylaws:
- (1) a certain method must be used for amending the articles;
 - (2) a corporation has perpetual duration and certain powers;
 - (3) certain procedures apply to the adoption, amendment, or repeal of bylaws by the members;
 - (4) a director holds office until expiration of the director's term and election of a successor;
 - (5) the term of a director filling a vacancy expires at the end of the term the director is filling;
 - (6) the compensation of directors is fixed by the board;
 - (7) a certain method must be used for removal of directors;
 - (8) a certain method must be used for filling board vacancies;
 - (9) board meetings must be held at least once per Year and if the board fails to select a place for a board meeting, it must be held at the registered office;

- (10) a director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting;
- (11) a majority of the board is a quorum;
- (12) the affirmative vote of the majority of directors present is required for board action;
- (13) a committee consists of one or more persons, who need not be directors, appointed by the board;
- (14) the president and treasurer have certain duties, until the board determines otherwise;
- (15) officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so;
- (16) a corporation does not have members;
- (17) the board may determine the consideration required to admit members;
- (18) all members are entitled to vote and have equal rights and preferences in matters not otherwise provided for by the board or members;
- (19) memberships may not be transferred;
- (20) a corporation with voting members must hold a regular meeting of voting members annually;
- (21) if a specific minimum notice period has not been fixed by law, at least five days' notice is required for a meeting of members;
- (22) the board may fix a date up to 60 days before the date of a members meeting as the date for determination of the members entitled to notice of and entitled to vote at the meeting;
- (23) each member has one vote;
- (24) the affirmative vote of the majority of members with voting rights present and entitled to vote is required for action of the members, unless this chapter or the articles or bylaws require a greater vote or voting by class;
- (25) members may take action at a meeting by voice or ballot, by unanimous action without a meeting, by mailed ballot, or by electronic communication;

- (26) the number of members required for a quorum is ten percent of the members entitled to vote;
 - (27) certain procedures govern acceptance of member acts; and
 - (28) indemnification of certain persons is required.
- (d) **Optional provisions; specific subjects.** The following provisions relating to the management or regulation of the affairs of a corporation may be included in the articles or, except for naming members of the first board, in the bylaws:
- (1) the first board of directors may be named in the articles;
 - (2) additional qualifications for directors may be imposed;
 - (3) terms of directors may be staggered;
 - (4) the day or date, time, and place of board meetings may be fixed;
 - (5) in addition to the president; authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation;
 - (6) additional officers may be designated;
 - (7) additional powers, rights, duties, and responsibilities may be given to officers;
 - (8) a method for filling vacant offices may be specified;
 - (9) membership criteria and procedures for admission may be established;
 - (10) membership terms may be fixed;
 - (11) a corporation may levy dues, assessments, or fees on members;
 - (12) a corporation may buy memberships;
 - (13) a corporation may have delegates with some or all the authority of members;
 - (14) the day or date, time, and place of regular member meetings or the place of special meetings may be fixed;
 - (15) certain persons may be authorized to call special meetings of members;
 - (16) notices of special member meetings may be required to contain certain information,

- (17) a larger than majority vote may be required for member action;
 - (18) members may vote by proxy; and
 - (19) members may enter into voting agreements.
- (e) **Optional provisions; generally.** The articles may contain other provisions consistent with law relating to the management or regulation of the affairs of the corporation.
- (f) **Powers need not be stated.** It is not necessary to state the corporate powers granted by this chapter in the articles.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 6.

§ 2104. Private Foundations; Provisions Considered Contained in Articles.

- (a) **Provisions required.** The articles of incorporation of a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986 and an instrument governing the use, retention, or disposition by the corporation of its income or property must contain the provisions contained in this section. If the articles and instrument do not contain these provisions they are considered to have incorporated the language in paragraphs graphs (1) to (5) with the same effect as though the language was set forth verbatim. Except as provided in subsection (b), these provisions govern the corporation as to the use, retention, and disposition of its income and property regardless of provisions of the articles or instrument or other law of this state to the contrary:
- (1) the corporation shall distribute for each of its taxable years amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1986;2
 - (2) the corporation may not engage in an act of “self-dealing” as defined in section 4941(d) of the Internal Revenue Code of 1986 that would give rise to liability for the tax imposed by section 494 1 (a) of the Internal Revenue Code of 1986;
 - (3) the corporation may not retain “excess business holdings” as defined in section 4943(c) of the Internal Revenue Code of 1986 that would give rise to liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1986;
 - (4) the corporation may not make investments that would jeopardize the carrying out of the exempt purposes of the corporation, within the meaning of section

4944 of the Internal Revenue Code of 1986, so as to give rise to liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1986; and

- (5) the corporation may not make a “taxable expenditure” as defined in section 4945(d) of the Internal Revenue Code of 1986 that would give rise to liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1986.
- (b) **Exception.** Subsection (a) does not apply to a corporation if a court of competent jurisdiction determines that the application would be contrary to the terms of an instrument described in subsection (a) and that the instrument may not properly be changed to conform to subsection (a). Subsection (a) does not apply to nonprofit Corporate Body Politic organizations described in 16 MLBS § 2101).
- (c) **Future references.** A reference in subsection (a) to a particular section of the Internal Revenue Code of 1986 includes the corresponding provision of a future United States Internal Revenue law.
- (d) **Rights reserved.** This section does not impair the rights and powers of the Solicitor General or the Court of Central Jurisdiction with respect to a corporation.
 - (1) 26 U.S.C.A. § 509(a).
 - (2) 26 U.S.C.A. § 4942(a).
 - (3) 26 U.S.C.A. § 4941(d).
 - (4) 26 U.S.C.A. § 4941(a).
 - (5) 26 U.S.C.A. § 4943(c).
 - (6) 26 U.S.C.A. § 4943(a).
 - (7) 26 U.S.C.A. § 4944.
 - (8) 26 U.S.C.A. § 4945(d).
 - (9) 26 U.S.C.A. § 4945(a).

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-1 6B, § 7.

§ 2105 Corporate Name.

(a) **Requirements.**

- (1) The corporate name must be in the English language, the Ojibwe language, or in another language expressed in English letters or characters.
- (2) A corporate name may not contain a word or phrase that shows or implies that it may not be incorporated under this chapter.
- (3) A corporate name need not contain the word “corporation,” “incorporated” “company” or an abbreviation of one of these words.

- (b) **Name must be distinguishable.** A corporate name must be distinguishable upon the records in the office of Commissioner from the name of a domestic corporation or limited partnership, a foreign corporation or limited partnership authorized or registered to do business within the jurisdiction of the Band, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved, registered, or provided for in Band Statute or regulations promulgated pursuant thereto unless exempted by the Commissioner.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 8.

§ 2106. Reserved Name.

- (a) **Who may reserve.** A corporate name permitted by this chapter may be reserved in the records of the Commissioner by:

- (1) a person doing business within the jurisdiction of the Band under that name;
- (2) a person intending to incorporate under this chapter;
- (3) a domestic corporation intending to change its name.

- (b) **Method of reservation.** The reservation must be made by filing with the Commissioner a request that the name be reserved. If the name is available for reservation by the applicant, the Commissioner shall reserve the name for the applicant for 12 months. The reservation may be renewed for successive 12-month periods.

- (c) **Transfer of reservation.** The right to a corporate name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the

name was reserved by filing with the Commissioner a notice of the transfer and specifying the name and address of the transferee.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 9.

§ 2107. Registered Office; Registered Agent.

- (a) **Registered office.** A corporation shall continuously maintain a registered office within the jurisdiction of the Band. A registered office need not be the same as the principal place of business of the corporation.
- (b) **Registered agent.** A corporation may designate in its articles a registered agent. The registered agent may be a natural person residing within the jurisdiction of the Band, a domestic corporation, or a foreign corporation authorized to transact business within the jurisdiction of the Band. The registered agent must maintain an office that is identical with the registered office.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B. § 10.

§ 2108. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.

- (a) **Statement.** A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the Commissioner a statement containing:
 - (1) the name of the corporation;
 - (2) if the address of its registered office is to be changed, the new address of its registered office;
 - (3) if its registered agent is to be designated or changed, the name of its new registered agent;
 - (4) if the name of its registered agent is to be changed, the name of its registered agent as changed;
 - (5) a statement that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and

- (6) a statement that the change of registered office or registered agent was authorized by resolution approved by the board.
- (b) **Resignation of agent.** A registered agent of a corporation may resign by filing with the Commissioner a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its registered office. The appointment of the agent ends 30 days after the notice is filed with the Commissioner.
- (c) **Change of address or name of agent.** If the address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent of a corporation represented by that agent by filing with the Commissioner the statement required in subsection (a), except that it need be signed only by the registered agent, need not be responsive to paragraph (3) or (6) of subsection (a), and must state that a copy of the statement has been mailed to the corporation.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 11.

§ 2109. Amendment of Articles.

The Articles of a Corporation organized under this chapter may be amended in a manner prescribed by the Commissioner.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 12.

§ 2110. Filing; Effective Date of Articles.

- (a) **Filing required.** Articles of incorporation and articles of amendment must be filed with the Commissioner.
- (b) **Effective date.** Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the Commissioner accompanied by a payment of which includes a \$ incorporation fee in addition to the \$ ___ filing fee.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 13.

§ 2111 Presumption; Certificate of Incorporation.

When the articles of incorporation have been filed with the Commissioner and the required fee has been paid to the Commissioner, it is presumed that conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the Commissioner shall issue a certificate of incorporation to the corporation. This presumption does not apply against the Band in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

Historical and Statutory Notes

Source:

Band Statute 1077-MLC-16B, § 14.

TITLE 17 – BANKS AND BANKING

Chapter

1. Revolving Loan Fund

Section

1

CHAPTER 1

REVOLVING LOAN FUND

Section:

- 1. Reservation of Right Amendment.**
- 2. Retrospective Law.**
- 3. Loan Committee Establishment and Purpose.**
- 4. Committee Membership, Terms of Office and Salary.**
- 5. Officers.**
- 6. Loan Committee Meetings.**
- 7. Policies.**
- 8. Powers and Duties of the Board.**
- 9. Powers and Duties of the Office of Management and Budget.**
- 10. Reports and Audits.**
- 11. Suspension and Operation.**
- 12. Court of Central Jurisdiction.**
- 13. Solicitor General Obligation.**
- 14. Fund Authorization.**

Historical and Statutory Notes

The Preamble of Band Ordinance 41-98 provides: “Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of creating a Revolving Loan fund for members of the Mille Lacs Band of Ojibwe. The Band Assembly determines that it is in the Band’s best interest to provide and create a Revolving Loan Fund governed by a Loan Committee to protect the assets of the Band. This Act repeals and replaces Title 17 of the Mille Lacs Statutes Annotated in its entirety.”

§ 1. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend or repeal the several provisions of this Chapter, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 1.

§ 2. Retrospective Law.

This Chapter shall apply retroactively to all previous loans disbursed.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 2.

§ 3. Loan Committee Establishment and Purpose.

- (a) The Loan Committee is hereby established for the purpose of consulting with, advising and making recommendations to the Secretary-Treasurer and Band Assembly in all matters pertaining to the loan policy.
- (b) The authority and responsibility of the Loan Committee shall be to report the Secretary-Treasurer and Band Assembly on problems concerning loans to Band members and to foster the interest and cooperation of the all concerned parties on improving their methods of operations.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 3.

§ 4. Committee Membership, Terms of Office and Salary.

- (a) Existing Loan Committee members shall serve terms until September 30, 1998.
- (b) Effective October 1, 1998, the Loan Committee shall consist of six members who shall be nominated by the Chief Executive and confirmed by the Band Assembly, and who shall be persons who are knowledgeable or experienced in financial matters. To aid in making a selection of the six Board Members the Band Assembly shall submit a list to the Chief Executive of not less than seven names. Nominations shall include candidates from each district. Terms for three of the six members will be for two years initially and four years for the remaining three members. Subsequent to the expiration of the initial term appointments, all terms will be for four years.
- (c) The Board shall be subject to removal of members pursuant to 4 MLBSA § 15.
- (d) No members of the Loan Committee shall receive a salary for their Loan Committee Service.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 4.

§ 5. Officers.

The Chair and Secretary of the Loan Committee shall be elected annually by and from the members thereof.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 5.

§ 6. Loan Committee Meetings.

- (a) Meetings may be called by the Chair of the Loan Committee. Four members of the Loan Committee shall constitute a quorum.
- (b) The Secretary shall ensure accurate record keeping of all meetings and transcripts thereof. Such records shall be prima facie evidence of the facts therein. Minutes shall be approved by the Loan Committee and signed by the Chair of the Loan Committee at the next loan meeting.

- (c) Minutes shall be forwarded to Band Assembly and the Chief Executive within two weeks of their approval.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 6.

§ 7. Policies.

Band Assembly shall ratify the policies for the loan committee.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 7.

§ 8. Powers and Duties of Board.

The Mille Lacs Band of Ojibwe Loan Committee shall have the following powers:

- (a) To act on and approve applications for loans.
- (b) To recommend amendments to the Loan policies to Band Assembly.
- (c) To fill vacancies in the Loan Committee until successors are nominated by the Chief Executive and confirmed by the Band Assembly.
- (d) To approve loan applications of Loan Committee members subject to the concurrence of the Secretary-Treasurer.
- (e) In furtherance of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest for provident purposes, and not in limitation of specific powers contained herein, to have all the powers enumerated, authorized and permitted by this Chapter and such other rights, privileges and powers as may be incidental to, or necessary for, the accomplishment of the objectives and purposes of the Loan Committee.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 8.

§ 9. Powers and Duties of the Office of Management and Budget.

- (a) The Office of Management and Budget shall have the responsibility to administer the Revolving Loan Fund for the Mille Lacs Band of Ojibwe.
- (b) The Office of Management and Budget may contract with lending institutions for the purpose of loan servicing.
- (c) The Office of Management and Budget shall be responsible for initiating all delinquent loan proceedings.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 9.

§ 10. Reports and Audits.

The Loan Committee shall annually file a report to the Chief Executive and Band Assembly for the purpose of giving such relevant information as may be required concerning the Loan Committee during the preceding year, although from time to time additional reports may be required. The Revolving Loan Fund shall be reviewed as part of the annual audit of the Mille Lacs Band of Ojibwe. A copy of the audit shall be forwarded to the Chief Executive and Band Assembly within sixty days after the completion of the audit.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 10.

§ 11. Suspension of Operation.

- (a) Whenever the Band Assembly finds that the Loan Committee is engaged in unsafe or unsound practices in overseeing the Loan Fund or has knowingly or negligently permitted any of its committee members or employees to violate any material provision of any law, bylaw or regulation to which the Loan Fund is subject, the Band Assembly may suspend operation of the Loan Fund.
- (b) The Secretary-Treasurer, after formal action of the Band Assembly may suspend the operation of the Loan Fund by giving written notice to the Loan Committee. The notice shall include a list of reasons for said suspension and a list of any specific violations of law, bylaw or regulation and shall specify which operations, if any, may be continued during the period of suspension. The notice shall also fix a time and place for a hearing before the Band Assembly. The hearing shall be held within thirty calendar days of the notice of suspension. Evidence may be produced at such hearing

by any party thereto. The decision as to the continued suspension of operations of the Loan Fund shall be based upon the evidence presented. If the Band Assembly, by formal action, decides to continue suspension, they shall give written notice to the Loan Committee.

- (c) In lieu of the immediate suspension of the operation of the Loan Fund, the Secretary-Treasurer may submit a written notice with respect to practices or violations for the purpose of investigation and review so that the Loan Committee may have a reasonable time within which to correct any deficiencies. If corrections are not made within the time stated in the notice, the Band Assembly, by formal action, may suspend the operation of the loan fund in accordance with this section.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 11.

§ 12. Court of Central Jurisdiction.

The Court of Central Jurisdiction is hereby granted exclusive original jurisdiction for any cause of action which arises from this Chapter or operations of the loan fund. Nothing in this chapter shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe in any court of competent jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 12.

§ 13. Solicitor General Obligation.

The Solicitor General may represent the interest of the Loan Committee in any matter before the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 13.

§ 14. Fund Authorization.

The Band Assembly hereby authorizes a maximum of \$650,000 for the Revolving Loan Fund. These funds shall remain reserved in the general fund to provide for the operations of the Revolving Loan Fund.

Historical and Statutory Notes

Source:

Band Ordinance 41-98, § 14.

TITLE 18 - COMMERCIAL PRACTICES

<u>Chapter</u>	<u>Section</u>
1. General Provisions	1
2. Licensing of Commercial Entities	101
3. Regulation of Trade	201
4. Uniform Commercial Code	301
5. Indian Employment Rights	401
6. Minimum Wage	501

Historical and Statutory Notes

The Preamble of Band Statute 1090-MLC-7 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians a code to license all persons, companies, corporations, associations, partnerships cooperatives. Utilities and any other public or private commercial entity who engages in the sale of any goods and/or services with any Band member, mdi an(s) or other person(s) who reside on lands subject to the jurisdiction of the Mille Lacs Band of Chippewa Indians and with any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, any political sub-division(s) thereof, and/or any entity under the jurisdiction of the Mille Lacs Band of Chippewa Indians on lands subject to the jurisdiction of the Mille Lacs Band of Chippewa Indians and for other related purposes, such as persons who solicit business or literature upon those persons who reside on lands under the jurisdiction of the Band and those who peddle merchandise of any type of goods or services upon those persons who reside on lands under the jurisdiction of the Band."

Band Statute 1090-MLC-7, § 27 provides: "Section 27. Severability. If any provisions of this chapter, or the application thereof, to any person, business, corporation or state government or any political subdivision or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provisions or application and to this end the provisions of this Chapter are declared severable."

Cross References

Administrative system, *see* 16 MLBS § 5.

Application of Truth in Lending Act, *see* 24 MLBS § 5.

Business corporations, foreign corporations, *see* 16 MLBS § 1004.

Nonprofit corporations, foreign corporations, *see* 16 MLBS § 2005.

CHAPTER 1

GENERAL PROVISIONS

Section

1. **Findings and Determinations.**
2. **Definitions.**
3. **Reservation of Right.**
4. **Rules and Regulations.**
5. **Jurisdiction of the Court of Central Jurisdiction; Damages.**
6. **Waiver of Sovereign Immunity.**
7. **Solicitor General Obligation.**
8. **Investigations Proceedings.**
9. **Equality and Consistency in the Exercise of Powers and Duties.**
10. **Violations.**

Historical and Statutory Notes

The title of Ordinance 15-14 is: “An ordinance amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; amending Sections 2, 4, 6 and 10 in Title 18 of the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 in the Mille Lacs Band Statutes Annotated; and repealing any inconsistent Indian Preference language in any other Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

The preamble of Ordinance 15-14 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; Sections 2, 4, 6 and 10 in Title in the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated (the Band’s Indian Employment Rights Ordinance or ‘TERO’); and repealing any inconsistent Indian Preference language in Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

§ 1. Findings and Determinations.

- (a) The Band Assembly hereby finds and determines that pursuant to Article VI, Section 1, Sub-section 3, of the Constitution of the Minnesota Chippewa Tribe, that it may authorize, regulate and license all persons, companies, corporations, associations, partnerships, cooperatives, utilities, and any other public or private commercial entity who engages in the sale of any goods and/or services with any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians.
- (b) The Band Assembly hereby finds and determines that the regulation and licensure of all persons, companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who engage in the sale of any goods and/or services with any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians is an effective way to regulate commercial activity on lands under the jurisdiction of the Band and that such regulation is vital to the

economic security, political integrity and general welfare of the members of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians.

- (c) The Band Assembly hereby finds and determines that members of the Mille Lacs Band of Chippewa Indians have entered into grossly unfavorable contracts with other persons, companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who engage in the sale of any goods and/or services under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians with said contracts not being clearly understood by said Band members.
- (d) The Band Assembly hereby finds and determines that many members of the Mille Lacs Band of Chippewa Indians have been imposed upon by persons who solicit and/or peddle literature, insurance policies, merchandise of poor quality and other like-type goods or services and that said persons utilize unprofessional sales tactics in order to coerce Band members and others to accept said products which Band members under ordinary circumstances would not accept.
- (e) The Band Assembly hereby finds and determines that through the imposition of a license regulations governing such transactions upon all persons, companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who engage in the sale of any goods and/or services with Band members and others under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians is an effective way to regulate such 'transactions and to protect basic civil rights to due process of those persons subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, pursuant to 1 MLBS § 1 et seq. and Article XIII of the Constitution of the Minnesota Chippewa Tribe.
- (f) The Band Assembly hereby finds and determines that any person(s), companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who desires to engage in such commercial activity, be permitted to do so under such rules and regulations as the Band Assembly may enact or the Chief Executive pursuant to lawful Executive Order may prescribe, so that the best interest of Band members and others under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall be protected.
- (g) The Band Assembly hereby finds and determines that pursuant to Article VI, Section 1 , Subsection D and Article XV, Section 1 , 2 and 3 of the Constitution of the Minnesota Chippewa Tribe requires that any ordinance which imposes a license or fee upon non-members of the Minnesota Chippewa Tribe-Non-Removable Mille Lacs Band of Chippewa Indians shall be subject to review by the Secretary of Interior, and the regulatory provisions of Chapters 1 to 5 of this title clearly fall within the provisions of the aforementioned constitutional declaration.
- (h) The Band Assembly hereby finds and determines that in the best interests of Indian Self-Determination that the Secretary of Interior shall exercise his fiduciary

obligation by reviewing any proposed Band Statute that levies a licensing fee on nonmembers of the Non-Removable Mille Lacs Band of Chippewa Indians and making recommendations to the Band Assembly so that it may become a Band Statute for regulatory and revenue generating purposes and be codified into the laws of the Non-Removable Mille Lacs Band of Chippewa Indians without undue delay.

- (i) The Band Assembly hereby finds and determines that persons, companies, corporations, associations, partnerships, cooperatives, utilities and any other public or private commercial entity who engage in the sale of any goods and/or services of any material value with any person subject to the jurisdiction, on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians or with the Non-Removable Mille Lacs Band of Chippewa Indians or any entity or any political subdivision thereof; have conducted such business transactions without regard to the law, policies or judicial determinations of the Non-Removable Mille Lacs Band of Chippewa Indians and that such a condition violates the general welfare, economic security and political integrity of the Band members and others under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians and that due to this condition , it is necessary to promulgate rules and regulations which govern the conduct of these transactions on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 1.

§ 2. Definitions.

As used in Chapters 1 to 4 of this title, the words, terms, and phrases, defined in this section have the meanings given them. Unless the language or context of any undefined word, term or phrase, clearly indicates that a different meaning is intended, the meaning of sub-joined to any said work, term or phrase shall be subject to definitions found in Minnesota Statutes.

- (a) **Association:** The act of a number of persons in uniting together for some special purpose or business.
- (b) **Commercial Entity:** Any person(s), company(ies), corporation(s), association(s), partnership(s), cooperative(s), utility(ies) and any other public or private commercial entity who engage in trading in any goods and/or services of any material value with any person subject to the jurisdiction on lands, subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians or with the Non-Removable Mille Lacs Band of Chippewa Indians or any entity or any political subdivision thereof.
- (c) **Company:** Union or association of persons for carrying on a commercial or industrial enterprise.

- (d) **Cooperative:** A corporation or association organized for purpose of rendering economic services, without gain to itself, to shareholders or members who own and control it.
- (e) **Corporation:** An artificial person or legal entity created by or under the authority of the laws of the Non-Removable Mille Lacs Band of Chippewa Indians, any state or nation, composed in some rare instances of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals, including those entities defined in Band Statutes 1077-MLC-16, § 26.0126.03.
- (f) **Court:** The Court of Central Jurisdiction as created pursuant to 5 MLBS § 1 et seq.
- (g) **Partnership:** A voluntary contract between two or more competent persons to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them.
- (h) **Person:** A natural person, corporation, company, association, cooperative, unincorporated association, trust or joint stock association, church, religious sect, religious denomination, or league and includes any trustee, receiver, assignee, agent or other similar representative thereof.
- (i) **Process:** Any statutory notice or demand required or permitted to be served on a natural person or a corporation and includes a summons in a civil action and any process which may be issued in any action or proceedings in the Court of Central Jurisdiction.
- (j) **Solicit:** The request, directly or indirectly, for any contribution, regardless of which party initiates communication, on the plea or representation that such contribution will or may be used for any charitable purpose, and the term shall be all inclusive.
- (k) **Solicitation:** Asking, enticing, requesting; or to appeal for something.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-7, § 32.
 Band Ordinance 15-14, Title II, § 1.

§ 3. Reservation of Right.

The Band Assembly hereby fully reserves the right to alter, amend or repeal the provisions of this title with the required review and approval of the Secretary of Interior. All rights and privileges granted or extended hereunder, shall be subject to such reserved right, however said

reservation of right shall not be applicable to existing licenses issued prior to any statutory amendment.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-7, § 26.

§ 4. Rules and Regulations.

The Corporate Commission is authorized to issue all rules and regulations necessary for the implementation of Chapters 1 to 4 of this title.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-7, § 3.01.
Band Ordinance 15-14, Title II, § 2.

Cross References

Powers and duties of Corporate Commission, *see* 16 MLBS § 111.

§ 5. Jurisdiction of the Court of Central Jurisdiction; Damages.

- (a) The Court of Central Jurisdiction is hereby conferred exclusive subject matter jurisdiction to resolve any and all disputes which may arise pursuant to any provisions of Chapters 1 to 4 of this title. The provisions of 5 MLBS §113, shall apply to any non-Indian who initiates any action in the Court of Central Jurisdiction pursuant to any provision of Chapters 1 to 4 of this title. All non-Indian persons who apply for and receive a license to engage in the sale of goods and/or services pursuant to provisions of Chapters 1 to 4 of this title shall be deemed to have voluntarily consented to the civil jurisdiction of the Court of Central Jurisdiction for all civil causes of action which arise herewith.
- (b) Any cause of action which arises pursuant to any provision of Chapters 1 to 4 of this title in which the Non-Removable Mille Lacs Band of Chippewa Indians or any of its political entities is named as a defendant shall be limited in relief to declaratory or injunctive measures and no damages monetary or otherwise, including but not limited to attorney fees, shall be permitted.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 25.

Cross References

Damages, generally, *see* 24 MLBS § 651 et seq.

Subject matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 6. Waiver of Sovereign Immunity.

Nothing in this title shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe in any state or federal court.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 30.

Band Ordinance 15-14, Title II, § 3.

§ 7. Solicitor General Obligation.

The Solicitor General shall represent the interest of the Non-Removable Mille Lacs Band of Chippewa Indians and the Corporate Commission in any matter arising from any provision of Chapters 1 to 4 of this title before the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 31.

Cross References

Duties of Solicitor General, *see* 4 MLBS § 18.

§ 8. Investigations Proceedings.

The Commissioner of Corporate Affairs in his discretion may make investigations as he deems necessary to determine whether any person has violated or is about to violate any provisions of Chapters 1 to 4 of this title or any Commission Order issued pursuant thereto and to submit the results of this investigation to the Solicitor General for appropriate court action.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 11.

§ 9. Equality and Consistency in the Exercise of Powers and Duties.

Notwithstanding the provisions of any other title of the Mille Lacs Band Statutes Annotated, the Corporate Commission and the Solicitor General may use any information in their possession, or to which they have access, to insure equal and consistent application and enforcement of the provision of this law which is administered by the Commission. This section shall not be construed as granting the Corporate Commission or Solicitor General any power to release information under their direct control to any exterior person, entity or government absent a due process hearing. All information collected shall be deemed highly classified and confidential.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-7, § 29.

§ 10. Violations.

Any person who shall fail to comply with the licensing provisions of Chapters 1 to 4 of this title or any lawful Commission Order, or order of the Court of Central Jurisdiction shall be deemed guilty of the offense of obstruction of the lawful process, and upon conviction thereof, shall be sentenced to a suspension or revocation of the privilege to conduct commercial enterprise on lands subject to the jurisdiction of the Band for a period not to exceed one hundred eighty days or exclusion from said lands pursuant to provisions of 2 MLBS § 201 et seq.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 24.

Band Ordinance 15-14, Title II, § 4.

Cross References

Licensing of commercial entities, *see* 18 MLBS § 101 et seq.

CHAPTER 2

LICENSING OF COMMERCIAL ENTITIES

Section

101. Power to License.

102. Application for License.

103. Classes of Licenses.

104. Fees for Issuance of License.

105. License Fee Revenue Distribution.

106. Licenses Issued to Principal of Commercial Entity.

- 107. License Period.**
- 108. License Renewal.**
- 109. Denial, Suspension, Revocation of License.**
- 110. Service of Process.**
- 111. Forfeiture of Goods.**
- 112. Power to Close Unlicensed Stores.**

Cross References

Violations, *see* 18 MLBS § 10.

§ 101. Power to License.

The Corporate Commission shall have the sole power and authority to license commercial entities who sell or offer for sale any goods and/or services to person(s) on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. Any persons(s), company(ies), corporation(s), association(s), partnership(s), cooperative(s), utility(ies) and any other public or private commercial entity who desires to sell or offer for sale any goods and/or services of any material value or to sell or offer for sale the exchange of property, real or personal, as defined in 24 MLBS § 3302, with any Band member or Indian or any person subject to the jurisdiction of the Mille Lacs Band of Chippewa Indians; or with the Non-Removable Mille Lacs Band of Chippewa Indians; or any political subdivision or entity thereof, shall upon establishing the fact to the satisfaction of the Corporate Commission that he is a proper person or entity to engage in such activity, be permitted to do so under such rules and regulations as the Corporate Commission may prescribe through the issuance of lawful Orders of the Commission. Any such Commission Order shall not be applicable to any commercial entity during the term of any existing license but shall become effective upon the issuance of a new license or upon renewal of an existing license.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 2.52

§ 102. Application for License.

- (a) Application for licenses must be made in writing on a form prescribed by the Corporate Commission, setting forth the full name and residence of the applicant; if a firm, the firm name and the name of each member thereof, the place where it is proposed to carry on the sale of goods and services; the capital to be invested, the names of the clerks to be employed; the person responsible for the general books of account of the firm and the name of one other person exclusive of the owner who shall both be designated to receive service of process; and the business experience of the applicant. The application must be forwarded through the Commissioner of

Corporate Affairs. Licensed entities will be held responsible for the conduct of their employees.

- (b) When an application for a license or permit is filed with the Commissioner of Corporate Affairs, the application shall be accompanied by a nonrefundable fee of ten dollars (\$10.00). The Corporate Commission shall be ninety days from the date of filing to approve or deny any application. Notwithstanding, the Commissioner of Corporate Affairs shall issue a temporary license valid for ninety days upon receipt and filing of said application.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-7, § 5.

§ 103. Classes of Licenses.

The Non-Removable Mille Lacs Band of Chippewa Indians hereby designates the following classes of licenses which shall be available for any commercial entity who desires to engage in the sale of any goods and/or services on lands subject to the jurisdiction of the Band. The following classes of licenses shall be made available to any person, company, corporation, association, partnership, cooperative, utility, or financial institution, be it public or private who seeks to engage in the sale of such goods or services on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. The class of license sought shall be issued according to the classification of the goods and/or services sold on said lands.

- (a) **Retail Sales License.** This license is available to a person who sells any goods and commodities at retail on lands under the jurisdiction of the Band.
- (b) **Entertainers License.** This license is available to a person who provides entertainment to the public. For example: a band, theater or dance troupe, etc.
- (c) **Professional Services License.** This license is available to a person who provides services in the practice of medicine and surgery, chiropractic, nursing, optometry, psychology, dentistry, pharmacy, podiatry, veterinary medicine, architecture, engineering, surveying, landscape architecture, accountancy and law.
- (d) **Utilities License.** This license is available to a person providing telephone, electrical, water, sewer, gas to the public.
- (e) **Public Accommodations License.** This license is available to a person providing lodging, prepared foods or beverages, and equipment rental to the public.
- (f) **Hawkers, Peddlers, Transient Merchants License.** This license is available to a person who transacts any temporary and transient business on lands under the

jurisdiction of the Band including selling goods, wares, merchandise and distributing literature of any type.

- (g) **General Service License.** This license is available to a person who provides commercial services to the public, such as refuse disposal, plumbing, auto or equipment repair, electrical, carpentry, cleaning and maintenance services, personal care and other like general services.
- (h) **Special Events License.** This license is available to a person who conducts commercial activity usually on a one time per annum basis, but not exceeding three times per annum. Said activity does not occur on a regular or consistent basis.
- (i) **Miscellaneous License.** This license is available to a person who sells goods or services that do not fall into another category in subsections (a) to (h).

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-7, § 6.

§ 104. Fees for Issuance of License.

The following fee schedule based on annual gross sales of the licensed entity is hereby enacted for various classes of licenses offered in 18 MLBS § 103.

- (a) License fee for Commercial Services License is hereby established at:

\$ -0- to \$50,000.00	= \$75.00
\$ 50,001.00 to \$100,000.00	= \$100.00
\$100,001.00 and over	= \$150.00
- (b) License fee for Entertainers License is hereby established at fifty dollars (\$50.00).
- (c) License fee for Professional Services License is hereby established at:

\$ -0- to \$50,000.00	= \$75.00
\$ 50,001.00 to \$100,000.00	= \$100.00
\$100,001.00 and over	= \$150.00
- (d) License fee for Public Utilities License is hereby established at:

\$ -0- to \$50,000.00 = \$75.00

\$ 50,001.00 to \$100,000.00 = \$100.00

\$100,001.00 and over = \$150.00

(e) License fee for Public Accommodations License is hereby established at:

\$ -0- to \$50,000.00 = \$75.00

\$ 50,001.00 to \$100,000.00 = \$100.00

\$100,001.00 and over = \$150.00

(f) License fee for Hawkers, Peddlers, Transient Merchants License is hereby established at:

\$ -0- to \$50,000.00 = \$25.00

\$ 50,001.00 to \$100,000.00 = \$40.00

\$100,001.00 and over = \$50.00

(g) License fee for General Commercial Services License is hereby established at:

\$ -0- to \$50,000.00 = \$75.00

\$ 50,001.00 to \$100,000.00 = \$100.00

\$100,001.00 and over = \$150.00

(h) License fee for One-Time Special Events is hereby established at fifty dollars (\$50.00).

(i) License fee for Miscellaneous License is hereby established at:

\$ -0- to \$50,000.00 = \$75.00

\$ 50,001.00 to \$100,000.00 = \$100.00

\$100,001.00 and over = \$150.00

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 7.

§ 105. License Fee Revenue Distribution.

All revenue derived from license fees from this title shall be forwarded on the first day of each month to the Commissioner of Finance who shall superintend and manage said funds until lawfully disbursed pursuant to formal Revenue Resolution of the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 23.

§ 106. Licenses Issued to Principal of Commercial Entity.

The Corporate Commission shall issue licenses only in the name of the principal owner of any commercial entity who transacts business pursuant to provisions of this title. Any said license issued pursuant to provisions of this title is nontransferable.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 13.

§ 107. License Period.

License to sell or offer for sale any goods and/or services to any person subject to the jurisdiction of the Band shall be valid throughout the calendar year in which it is issued.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 8.

§ 108. License Renewal.

Application for renewal of license shall be made to the Commissioner of Corporate Affairs on an appropriate form at least thirty days prior to the expiration of the existing license and the Commissioner must report to the Corporate Commission as to the record the applicant has made and his fitness to continue as a commercial entity under a new license.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 9.

§ 109. Denial, Suspension, Revocation of License.

- (a)
 - (1) The Corporate Commission may by order deny any application or suspend or revoke any license or registration if it finds that the applicant, registrant or licensee:
 - (i) has filed an application for a license or registration which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;
 - (ii) has engaged in a fraudulent, deceptive or dishonest practice;
 - (iii) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of conducting commercial activity;
 - (iv) has violated or failed to comply with any provision of this chapter or any Commission Order issued pursuant thereto.
 - (2) Any applicant for a license or licensee or registrant shall be accorded due process rights to a hearing pursuant to provisions of subsection (c)(1), prior to revocation, suspension or denial action.
- (b) The Corporate Commission may promulgate rules and regulations further specifying and defining those actions and omissions which constitute fraudulent, deceptive or dishonest practices, and establishing standards of conduct for commercial activity.
- (c)
 - (1) The Court of Central Jurisdiction may issue an order requiring a licensee, registrant or applicant for a license or registration to show cause why the license or registration should not be revoked or suspended. In the case of the denial of an application, the Corporate Commission may issue such a show cause order. All orders shall be calculated to give reasonable notice of time and place for hearing thereon, and shall state the reasons for the entry of the order. All hearings shall be conducted in accordance with 24 MLBS § 2001 et seq. After the hearing, the court shall enter an order making such disposition of the matter as the facts require. In the case of hearings before the Corporate Commission, the Commission shall enter an order making such disposition of the matter as the facts require. Any such order may be appealed to the Court of Central Jurisdiction.

- (2) If the licensee, registrant or applicant fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default, and the proceeding may be determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 10.

§ 110. Service of Process.

All commercial entities that sell or offer for sale any goods and/or services on lands subject to the jurisdiction of the Band, but do not maintain an office on lands subject to the jurisdiction of the Band shall be subject to service of process as follows: by service thereof on its registered agent within the Band or if there be no such registered agent, then upon the person who has been designated in the registration statement as having custody of books and records or upon the person who is an agent of the commercial entity or by placing a copy of said process in registered and regular United States mail at the last known address.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 14.

§ 111. Forfeiture of Goods.

Any person who shall attempt to conduct commerce on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians as a commercial entity, or to introduce goods, offer for sale any services or to conduct commercial activity therein without a license, shall forfeit all merchandise offered for sale to any person or the Band which is found in his possession to the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 4.

§ 112. Power to Close Unlicensed Stores.

If persons carry on commercial activities within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians with any person under the jurisdiction of the Band or the Band or entity of the Band without a license, or continue to conduct commerce after expiration of the license without applying for renewal, the Commissioner of Corporate Affairs will immediately

report the facts to the Solicitor General who may, if necessary, direct the Law Enforcement officials to close the store of such commercial entities. The Solicitor General shall within forty-eight hours file a proper complaint in the Court of Central Jurisdiction and seek permanent or temporary injunctive relief from the court whichever is appropriate.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 12.

CHAPTER 3

REGULATION OF TRADE

Section

- 201. Inspection of Prices.**
- 202. Credit at Seller's Risk.**
- 203. Cash Payment Only to Any Band Member.**
- 204. Government Checks Paid in Cash.**
- 205. Premises Kept in Sanitary Condition.**
- 206. Tobacco Sales to Minors.**
- 207. Imitation Indian-Made Goods and Commercially Grown Wild Rice Prohibited.**
- 208. Corporate Commission Authorizations.**
- 209. Pawnbrokers and Junk Dealers.**

§ 201. Inspection of Prices.

- (a) It is the duty of the Commissioner of Corporate Affairs, to see that the prices charged by commercial entities are fair and reasonable. To this end the commercial entities shall on request submit to the Commissioner or inspecting officials the original invoice, showing cost, together with a statement of transportation charges, retail price of articles sold by them, the amount of Indian accounts carried on their books, the total annual sales, the value of buildings, the number of employees, and any other business information such officials may desire. The quality of all articles kept on sale must be good merchandise. The Commissioner shall conduct any such inspection upon receipt of any complaint from any person.
- (b) The Corporate Commission shall promulgate standards for fair and reasonable inspection of any commercial entity located on lands subject to the jurisdiction of the Band, so as to prevent bias. No inspections shall occur until said standards have been promulgated.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 16.

§ 202. Credit at Seller's Risk.

Credit given to any Band members, will be at the seller's own risk, as no assistance will be given by Government officials in the collection of debts against any Band members other than that specified in 24 MLBS § 3001 et seq. Commercial entities shall not accept pawns or pledges of personal property by any Band members to obtain credit or loans. Receipts must be given to all articles they have sold to commercial entities and on which they have requested book credit. These receipts must show the following information: The date the transaction was made, the amount paid the Band member and a description of the article or articles sold. All receipts issued by the commercial entity for Band members products must be recorded in the commercial entity's book in such manner that all information contained in the receipt is duplicated. Receipts may be transferred upon order of the initial recipient if it is to his convenience that such a procedure be followed.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 17.

§ 203. Cash Payment Only to Any Band Member.

Commercial entities must not pay Band members in tokens, tickets, store orders or anything else of that character. Payment must be made in money, or in credit if the Band member is indebted to the commercial entity.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 18.

§ 204. Government Checks Paid in Cash.

Commercial entities must pay all government checks accepted in cash, merchandise or credit to the full value of the check presented. The acceptance of cash, merchandise, or credit for government checks shall be at the option of the Band member in all cases.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 19.

§ 205. Premises Kept in Sanitary Condition.

The commercial entities shall keep both their premises and place of business in a clean, sanitary and presentable condition at all times and shall avoid exposure of foodstuff to infection from the air, dust, insects or handling. It shall be the duty of the Commissioner of Human Services of the Band and his/her assistants to make periodical inspections, recommend improvements and report thereon to the Commissioner of Corporate Affairs or his duly authorized representative.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 20.

§ 206. Tobacco Sales to Minors.

No commercial entity shall sell tobacco, cigars, or cigarettes to any Band member under 18 years of age.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 15.

§ 207. Imitation Indian-Made Goods and Commercially Grown Wild Rice Prohibited.

- (a) No person shall introduce or have in his possession for disposition or sale to Band members or others, within the exterior boundaries of lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, any goods, wares, and merchandise known as moccasins, bead work, birchbark baskets, deerskin work, grass rugs, sweet grass baskets, and other goods which are manufactured or produced in imitation of genuine American Indian-made goods, wares, or merchandise without first clearly branding, labeling or marking said goods, wares or merchandise as imitation of genuine American Indian-made goods, wares or merchandise. For purposes of this section, Indian-made goods are those made exclusively by persons who are at least one-quarter Indian blood or who are listed on the rolls of any federally recognized Indian tribe, Band or community.
- (b) The brand, label or mark required by subsection (a) shall be the words "not Indian-made" and shall be placed or attached outside of and on a conspicuous part of the finished article so as to be plainly visible to the purchasing public, and shall be the size and style known as great primer Roman capitals. Such brand or mark, if the article will permit, shall be placed upon it, but when such branding or marking is impossible, a label shall be used and attached thereto.

- (c) Any person injured by violation of subsection (a) may bring a civil action and recover damages, together with costs and disbursements, including reasonable attorney's fees, and receive other equitable relief as determined by the Court of Central Jurisdiction.
- (d) No person shall sell, offer for sale, or have in his possession for the purpose of sale any commercially grown wild rice.
- (e) All such imitation Indian-made goods which are mislabeled, in violation of subsection (a) and commercially grown wild rice introduced in violation of subsection (d) shall be subject to seizure by any law enforcement officer of the Band in the event that any person shall introduce or intend to introduce for purposes of sale to the general public such goods and/or commercially grown wild rice.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 22.

§ 208. Corporate Commission Authorizations.

The Corporate Commission is authorized, whenever in its opinion the public interest may require, to prohibit the introduction of goods, or of any particular articles, into the country belonging to the Non-Removable Mille Lacs Band of Chippewa Indians and direct that all licenses to sell or offer for sale any goods and/or services with persons or the Band be revoked, and all applications therefore rejected. No commercial entity shall, so long as such prohibition exists, sell or offer for sale any goods and/or services with any entity of the Band and for said Band, or to any person subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 3.

§ 209. Pawnbrokers and Junk Dealers.

- (a) Every pawnbroker or junk dealer subject to the jurisdiction of the Court must keep a detailed register in which must be entered the description of every article pawned by him/her or purchased by him/her with the date of pawning or purchasing date when the article must be redeemed, with the name of the person by whom the article was pawned, or by whom purchased and the amount loaned thereon or paid thereof, and in case of the sale of any article pawned or pledged, the pawnbroker or junk dealer must enter upon said register the name of the purchaser, the time of the sale and the price paid therefore and the register must always be open to inspection and examination of any law enforcement officer.

- (b) Furthermore, no person may carry on the business of pawnbroker or junk dealer by receiving goods pawned, or in pledge for loans, at any rate of interest higher than is allowed pawnbrokers of junk dealers under Federal regulation. There must be no other or greater amount received by and pawnbroker or junk dealer, his/her employee or agents, for interest, commission, discount, storage or caring for property pledged than the rate allowed under Federal regulations.
- (c) Failure to comply with the terms and conditions of this section shall constitute an offense, punishable upon conviction of a sentence to labor for a period not to exceed 180 days, and/or by a fine not to exceed \$500.00, and the violator may be subject to other related charges under provisions of the Mille Lacs Band Statutes Annotated such as 24 MLBS § 1154. The Court may order the violator to cease and desist from any further business as pawnbroker or junk dealer until full compliance with this section is to the satisfaction of the Court.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 28.

CHAPTER 4

UNIFORM COMMERCIAL CODE

Section

301. Enactment.

302. Amendments.

Cross References

Application of Uniform Commercial Code to civil causes of action, *see* 24 MLBS § 4.

Contracts, acceptance and counteroffer, *see* 24 MLBS § 107.

§ 301. Enactment.

The Band Assembly hereby enacts the Uniform Commercial Code of the State of Minnesota-Minnesota Statutes, Chapter 336 as the Uniform Commercial Code for the Non-Removable Mille Lacs Band of Chippewa Indians. The Justices of the Court of Central Jurisdiction shall be bound by the provisions of Minnesota Statutes, Chapter 336 in all causes of action which arise pursuant thereto. Exclusive subject matter jurisdiction is hereby conferred to the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-7, § 28.

Cross References

Applicability to motor vehicle lien holders, *see* 19 MLBS § 18 [Digitizer's note: Section not in digital copy].

Applicability to watercraft, *see* 20 MLBS § 11.

Subject matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 302. Amendments.

Band Statute 1090-MLC-47 (*see*, now, 18 MLBS § 301) adopted the Uniform Commercial Code as adopted by the State of Minnesota. Should the State of Minnesota amend or change its Uniform Commercial Code after the enactment of the above mentioned Statute, the Commissioner of Corporate affairs may, in his discretion, adopt those amendments or changes into Band law via a Commissioner's Order.

Historical and Statutory Notes

Source:

Band Statute 1202-MLC-16A, § 16.

Cross References

Commissioner's Orders, *see* 4 MLBS § 7.

CHAPTER 5

TRIBAL EMPLOYMENT RIGHTS

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	401
2. Admission; Mille Lacs Band of Ojibwe Tribal Employment Rights Office	405
3. Indian Preference in Employment and Contracting	410
4. Fees	417
5. Compliance Plan, Notice, and Contract	421
6. Prohibition of Employment Discrimination	426
7. Employee Wage and Hour	431
8. Occupational Safety and Health of Employees	439
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Historical and Statutory Notes

The title of Ordinance 15-14 is: “An ordinance amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; amending Sections 2, 4, 6 and 10 in Title 18 of the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 in the Mille Lacs Band Statutes Annotated; and repealing any inconsistent Indian Preference language in any other Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.”

The preamble of Ordinance 15-14 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Section 3(a) in Title 6 of the Mille Lacs Band Statutes Annotated; Sections 2, 4, 6 and 10 in Title* in the Mille Lacs Band Statutes Annotated; amending Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated (the Band’s Indian Employment Rights Ordinance or ‘TERO’); and repealing any inconsistent Indian Preference language in Band law or policy, including any Corporate Commission policy, in order to create consistency in Band law and policy.” *So in original. Probably should be Title 18.

The title of Ordinance 30-14 is: “An Ordinance amending Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated to further advance the hiring of Band members on the reservation.”

The preamble of Ordinance 30-14 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Chapter 5 (TERO) of Title 18 of the Mille Lacs Band Statutes Annotated to further advance the hiring of Band members on the reservation.”

The title of Band Ordinance 07-17 states, “An Ordinance amending Chapter 5 entitled ‘Tribal Employment Rights’ of Title 18 of the Mille Lacs Band Statutes Annotated (MLBSA) to establish the Tribal Employment Rights Office as an autonomous entity within the government of the Mille Lacs Band of Ojibwe.”

The Preamble of Band Ordinance 07-17 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Chapter 5 of Title 18 of the Mille Lacs Band Statutes Annotated (MLBSA) to establish the Tribal Employment Rights Office as an autonomous entity within the government of the Mille Lacs Band of Ojibwe.”

Section 8 of Band Ordinance 07-17 states, “Throughout Chapter 5, ‘Board’ is amended to ‘TERO Commission’ or ‘Commission’.”

SUBCHAPTER 1

GENERAL PROVISIONS

Section

401. Policy.

401. Purpose.

402. Severability.

403. Definitions.

§ 401. Policy and Findings.

- (a) It is the policy of the Mille Lacs Band of Ojibwe (the Band) to provide a preference in employment and contracting to members of the Band and other federally recognized Indian tribes.
 - (1) This policy applies to employment and contracting by the Band's government (including all branches, departments and agencies thereof), by all Band-owned entities while they are engaged in commercial or economic activities on behalf of the Band within the Band's Reservation and by all persons and entities doing business with the Band (including subcontractors of persons or entities contracting with the Band) within the Band's Reservation.
 - (2) This policy: (A) is intended to further the Band's overriding interests in self-government, self-sufficiency and economic development; (B) is directed to the participation of the governed in the Band's governing bodies and in its commercial and economic activities; (C) is intended to make the Band's government and its commercial and economic activities more responsive to the needs of its constituents; and (D) is intended to provide for the economic security and employment of members of the Band and of other federally recognized Indian tribes and to overcome the effects of past discrimination against such persons.
 - (3) Economic insecurity and unemployment are serious impediments to the health, morale, and welfare of the Band. Employment and contracting opportunities with the Band's government and with Band-owned entities and other persons and entities doing business with the Band within the Band's Reservation are important resources for members of the Band and of other federally recognized Indian tribes, who have historically suffered from discrimination in employment and contracting opportunities. As a result, Indian people living on or near the Band's Reservation have unique and special employment rights under federal law, and the Band is obligated to implement those rights.
- (b) Subject to the policy described in paragraph (a) of this section, all employees subject to the Mille Lacs Band of Ojibwe's jurisdiction are entitled to a workplace environment that prohibits employment discrimination, protects employees' wages, and promotes health and safety.
- (c) The provisions of this Chapter are critically important to the health and welfare of members of the Band and of other federally recognized Indian tribes, especially those residing on or near the Band's Reservation. Unemployment and underemployment within the boundaries of the Band's Reservation are consistently many times higher than the national and state average. This pervasive unemployment and underemployment has directly contributed to serious social problems and a lower quality of life for members of the Band and of other federally recognized Indian tribes

residing on or near the Band's Reservation and impeded the self-governance objectives of the Band.

- (d) The Band declares that the public good and the welfare of the Band require the enactment of this Chapter, which is enacted pursuant to the Band's inherent sovereign and political powers, in order to increase employment of and the number of businesses owned by members of the Band and of other federally recognized Indian tribes, especially within the Band's Reservation, and to protect the workforce rights of Indian and non-Indian employees within the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 401.

§ 402. Purpose.

This Chapter is adopted by the Mille Lacs Band of Ojibwe (the Band), under its inherent sovereign and political powers, for the following purposes:

- (a) To promulgate Band laws and rules governing employment relations and contracting preference within the Band's jurisdiction;
- (b) To establish the Band's Tribal Employment Rights Office (TERO) in order to enforce the Band's laws governing employment and contracting preference, and to protect the rights of all members of the Band, members of other federally recognized Indian tribes, and all other employees within the Band's jurisdiction;
- (c) To increase the employment of members of the Band and of other federally recognized Indian tribes;
- (d) To eradicate employment discrimination, protect employees' wages, and protect employees' health and safety within the Band's jurisdiction;
- (e) To provide a fair, enforceable, and effective system of preferences in contracting and/or sub-contracting as it relates to the provision of supplies, services, labor and materials to the Band's government and to Band-owned entities and other persons or entities doing business with the Band (including subcontractors of persons or entities contracting with the Band) within the Band's Reservation; and
- (f) To supersede all other provisions of Band law that are inconsistent with the provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 402.

§ 403. Severability.

If any provision of this Chapter, or the application thereof to any person, business, corporation, government (including any agency or political subdivision thereof), or circumstance, is held invalid, the invalidity shall not affect any other provision or application of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared severable.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 403.

§ 404. Definitions.

- (a) **“Adverse Action”** means an action taken to try to keep an individual from opposing a discriminatory practice or from participating in an employment discrimination proceeding. Adverse actions include termination, refusal to hire, denial of promotion, threats, unjustified negative evaluations, unjustified negative references, increased surveillance or any other action, such as assault or unfounded civil or criminal charge, that are likely to deter reasonable people from pursuing their rights.
- (b) **“Band”** means the Mille Lacs Band of Ojibwe, a federally recognized Indian tribe, and includes the Band’s government (including all branches, departments and agencies thereof) and all Band-owned entities while they are engaged in commercial or economic activities on behalf of the Band within the Band’s Reservation.
- (c) **“Commission”** or **“TERO Commission”** means the Commissioner of the Tribal Employee Rights Office.
- (d) A **“Conflict of Interest”** occurs when a TERO Commission member is in a position to influence a decision that may result in a personal gain for that member or for a member of his or her Immediate Family.
- (e) **“Core Crew”** means regular, permanent employees in supervisory or other key positions where an employer would face serious financial loss if the positions were filled by persons who had not previously worked for that employer.
- (f) **“Covered Employer”** means the Band and any entity, company, contractor, sub-contractor, corporation or other business doing business with the Band (including

subcontractors of persons or entities contracting with the Band) within the Band's Reservation that employs for wages or other remuneration two (2) or more employees.

- (g) **“Days”** means calendar days, including holidays and weekends, unless otherwise indicated.
- (h) **“Director”** means the director of the Band's Tribal Employment Rights Office.
- (i) **“Disability”** means, with respect to an individual:
 - (1) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (2) a record of such an impairment; or
 - (3) being regarded as having such an impairment.

An impairment does not have to be permanent to rise to the level of a disability. Temporary impairments that take significantly longer than normal to heal, long-term impairments, or potentially long-term impairments of indefinite duration may be disabilities if they are severe.

- (j) **“EEOC”** means the federal Equal Employment Opportunity Commission.
- (k) **“Elected Officials”** means the Mille Lacs Band Chief Executive, Secretary-Treasurer, and District Representatives.
- (l) **“Immediate Family”** includes a person's spouse, a person's biological or adopted child, a member of a person's household, and a person's mother, father, sister, and brother.
- (m) **“Indian”** means a member of a federally recognized Indian tribe.
- (n) **“Indian Certified Entity”** means an entity, certified by the Board, in which fifty-one percent (51%) or more of the ownership interests are held by one or more Indians and in which daily management and control is provided by one of more Indians.
- (o) **“Reservation”** means all lands within the exterior boundaries of the Mille Lacs Indian Reservation as established by the Treaty of 1855, 10 Stat. 1165, all lands held in trust by the United States for the benefit of the Minnesota Chippewa Tribe, the Band or individual members of the Band, which are subject to the jurisdiction of the Band, and all lands owned by the Band which are located within one of the districts designated in 2 MLBS § 11.

- (p) **“TERO”** means the Band’s Tribal Employment Rights Office established by this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 404.
Band Ordinance 07-17, § 4.

SUBCHAPTER 2

ADMINISTRATION; MILLE LACS BAND OF OJIBWE TRIBAL EMPLOYMENT RIGHTS OFFICE

Section

- 405. TERO Commission and Recusal of Commission Members.**
- 406. Powers and Duties of the TERO Commission, and Compensation.**
- 407. Tribal Employment Rights Office; Director.**
- 408. Powers and Duties of TERO Director.**
- 409. Intergovernmental Relationships.**

§ 405. TERO Commission and Recusal of Commission Members.

- (a) **TERO Commission Members.** The TRERO shall be managed by the TERO Commission. At all times there shall be at least one Commission Member on the Commission from each District. The Commission shall consist of seven (7) Commission Members as appointed under § 405(a)(1).
 - (1) **Appointment Process; Terms.** Each Member shall be appointed using the following process: The Elected Officials shall each nominate two (2) individuals and submit their names to the Mille Lacs Band Parliamentarian. The Chief Executive and Secretary-Treasurer of the Band shall each nominate two (2) additional individuals and submit their names to the Mille Lacs Band Parliamentarian. Within ten (10) calendar days after receipt of the nominations, the Elected Officials shall convene and vote on one (1) of the two (2) nominees submitted from each Elected Official to be a Member of the Commission. Members appointed by the Chief Executive and District 1 Representative shall serve until December 1, 2018, and Members appointed by the Secretary-Treasurer, District II Representative, and District III Representative shall serve until December 31, 2020. Any subsequent appointment, other than to fill a vacancy that occurs prior to the end of a term, shall be for four years.

- (2) **Qualifications.** Commissioners shall be public officials subject to the Mille Lacs Band Ethics Code in 6 MLBS §§ 1151-1163. At least three of the Commissioners shall have education or experience in one or more of the following areas:
- (i) Humans Resources;
 - (ii) Tribal Employment Rights;
 - (iii) Construction Management;
 - (iv) Regulatory Enforcement; or
 - (v) Auditing or Investigations.
- (3) **Officers.** The TERO Commission Members shall select a Chair, Vice-Chair, and Secretary at the first meeting of the Commission, and annually thereafter. The Chair shall preside at all meetings of the Commission and shall be authorized to sign required documents in accordance with the powers of the Commission.

Historical and Statutory Notes

Source:

Band Ordinance 07-17, § 5.

Prior law:

Band Ordinance 15-14, Title III, Exhibit A, § 405.

§ 406. Powers and Duties of the TERO Commission, and Compensation.

- (a) The TERO Commission has the full power, jurisdiction, and authority:
- (1) Take all actions necessary and appropriate to implement the provisions of this Chapter;
 - (2) Approve or reject any and all rules, regulations and/or guidelines formulated by the Director to carry out the provisions of this Chapter and to approve or reject the amendment or rescission of any such rules, regulations, or guidelines, *provided that*, except when an emergency exists, the TERO Commission shall provide the public an opportunity to comment at a meeting of the TERO Commission before approving any such rules, regulations or guidelines or amendments or recessions thereof;

- (3) Conduct hearings in accordance with such rules of practice and procedure as may be adopted by the TERO Commission after providing the public an opportunity to comment on them at a meeting of the TERO Commission;
- (4) Order any relief or sanctions authorized by this Chapter, and to petition the Mille Lacs Band Court of Central Jurisdiction for such orders to enforce the decisions of the TERO Commission and any sanctions imposed by the TERO Commission, if necessary;
- (5) Make recommendations to the Band Assembly on amendments to this Chapter;
- (6) Establish a system for certifying firms as Indian Owned Businesses or Mille Lacs Band Owned businesses;
- (7) Maintain a list of Certified Businesses;
- (8) Assist Band Members in obtaining certification;
- (9) Coordinate training and mentorship programs for Band Members and Indians;
- (10) Monitor all contracting activities on Band Lands in consultation with the Elected Officials;
- (11) Inform the Band Government, Band Entities, Employers, and Contractors and assist in presentations to the public on the requirements of this Chapter with respect to Indian employment and contract preference requirements;
- (12) Oversee the Certified Businesses receiving invitations to bid on contracts;
- (13) Establish a Band labor surplus pool and refer Band Members and other Indians to an Employer or Contractor for employment considerations;
- (14) Assist procurement officers or delegated agents in the designation of contracts appropriate for the set aside program;
- (15) Develop and maintain an audit and reporting system which measures the effectiveness of the Indian Preference Policy in meeting its goals and objectives;
- (16) Establish procedures for TERO's regulatory proceedings;
- (17) Establish procedures, forms, and policies necessary to carry out the purposes of the Chapter; and

- (18) Enforce any employment and procurement laws, policies, and/or procedures in accordance with this Chapter.

- (b) **Compensation.** Commission members may receive a stipend for their services at a rate established by the Band Assembly. Commissioners shall be reimbursed for actual expenses incurred on Commission business, including necessary travel expenses in a manner consistent with applicable Band policies and procedures.

Historical and Statutory Notes

Source:

Band Ordinance 07-17, § 6.

Prior law:

Band Ordinance 15-14, Title III, Exhibit A, § 406.

§ 407. Tribal Employment Rights Office; Director.

There is hereby established as an agency of the Mille Lacs Band of Ojibwe government the Tribal Employment Rights Office (also known as “TERO”). The Director of the TERO shall be an employee of the TERO under the direct supervision of the TERO Commission and shall have the power and duties prescribed in § 408 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 07-17, § 7

Prior law:

Band Ordinance 15-14, Title III, Exhibit A, § 407.

§ 408. Powers and Duties of TERO Director.

The Director shall have the following powers and duties:

- (a) To formulate, amend and rescind regulations, rules and guidelines necessary to carry out the provisions of this Chapter, subject to the approval of the Board;

- (b) To implement and enforce the provisions of this Chapter, as well as any properly adopted regulations, rules, guidelines and orders;

- (c) To hire staff, expend designated funds from an approved budget, and obtain and expend funding from federal, state, and other sources;

- (d) To maintain a list of: (1) current Covered Employers, (2) current employer permits and work permits issued, and (3) current Indian Certified Entities;
- (e) To maintain a record of all contracting projects subject to this Chapter and the TERO fees assessed for each project;
- (f) To process applications for certification of Indian Certified Entities by the Board;
- (g) To grant TERO permits and collect TERO fees as authorized by this Chapter;
- (h) To establish training and workforce development programs, in conjunction with the Mille Lacs Band Department of Labor, for Band members and other Indians to assist them in obtaining and retaining employment;
- (i) To process applications for and maintain a list of Band members and other Indians living on or near the Reservation who are available for employment and to assist such persons with job placement; and
- (j) To contract with federal and/or state entities for the provision of additional job procurement services and funding consistent with the purposes of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 408.

§ 409. Intergovernmental Relationships.

The TERO, acting through the Director, is authorized, with the written concurrence of the Commissioner of Administration, to enter into cooperative relationships with federal employment rights agencies, such as the EEOC and the Office of Federal Contract Compliance Programs (OFCCP), and with state employment rights agencies, such as the Human Rights Commission, in order to eliminate discrimination against Indians on and off the Reservation, as well as to develop training programs for Indians. The Director may also, with the written concurrence of the Commissioner of Administration, enter into cooperative relationships with federal agencies, including but not limited to the Bureau of Indian Affairs, the Department of Labor, the Federal Highway Administration, and the Internal Revenue Service, in order to implement any federal employment or other workforce rights, authorities, or requirements as such agency may lawfully delegate to the Band.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 409.

SUBCHAPTER 3

INDIAN PREFERENCE IN EMPLOYMENT AND CONTRACTING

Section

- 410. Indian Preference in Employment.**
- 411. Covered Employer's Responsibilities.**
- 412. Core Crew.**
- 413. Indian Preference in Contracting.**
- 414. Indian Certified Entities.**
- 415. Applicability of Indian Preference in Contracting**
- 415A. Other Preferences to be Consistent.**

§ 410. Indian Preference in Employment.

- (a) All Covered Employers shall give preference to Indians living on or near the Reservation in the hiring, promotion, training, and all other aspects of employment within the boundaries of the Reservation, provided that these individuals have the necessary qualifications. The priority for Indian Preference is as follows:
 - (1) Mille Lacs Band Member
 - (2) Member of another federally recognized Indian Tribe
 - (3) All Others
- (b) Every Covered Employer shall encourage Indians to seek promotional opportunities. For every opening in a supervisory position, the employer shall inform Indian workers about the position and encourage them to apply.
- (c) No Covered Employer shall be permitted to maintain a position that no employment opportunities exist in the fulfillment of any said contract in order to evade the provisions of this section. The Covered Employer shall develop a goal statement which is subject to advance approval by the TERO Director prior to the commencement of any work. Additionally, no goal statement shall be approved which contains less than fifty percent (50%) for each construction operation in Indian employment opportunities pursuant to any contract.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 410.
Band Ordinance 30-14, Title I, § 1.

§ 411. Covered Employer's Responsibilities.

- (a) Advertising of positions. Covered Employers shall notify the TERO of openings in employment positions subject to this Chapter and provide job descriptions for such openings at or before the time at which they advertise the openings. Job descriptions shall not be written in a way to unnecessarily exclude Band members or other Indians from employment.
- (b) All Covered Employers shall define in writing the necessary qualifications for each employment position in their work force that is subject to this Chapter, which shall be provided to the Director and applicants upon request.
- (c) All Covered Employers shall comply with this Chapter, all rules and regulations relating to it, and all guidelines and orders of the Director.
- (d) The requirements in this Chapter shall not apply to any direct employment by the Federal or a State government or their agencies or subdivisions. However, such requirements shall apply to all contractors or grantees of such governments and to all commercial enterprises operated by such governments when they are doing business with the Band within the Reservation.
- (e) Covered Employers shall include and specify an Indian employment preference policy statement in all job announcements and advertisements and all employer policies that are subject to this Chapter.
- (f) Covered Employers shall post in a conspicuous place on their premises for their employees and applicants an Indian preference policy notice prepared or approved by the TERO.
- (g) Covered Employers, except for construction contractors, shall advertise and announce all openings in employment positions subject to this Chapter on the Mille Lacs Band website. Construction contractors, prior to starting work within the Reservation, shall provide a TERO Compliance Plan for the project to the TERO Director.
- (h) Covered Employers shall use non-discriminatory job qualifications and selection criteria in filling employment positions subject to the requirements of this Chapter. No Covered Employer shall use any job qualification criteria that serve as barriers to Indian preference in employment, unless the Covered Employer can demonstrate that such criteria or requirements are required by business necessity.
- (i) Regardless of the qualifications of any non-Indian applicant, any Indian who demonstrates the necessary qualifications for an employment position subject to this Chapter:

- (1) Shall be selected by Covered Employers in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and
- (2) Shall be retained by Covered Employers in the case of a reduction-inforce affecting a certain class of positions until all non-Indians employed in that class of positions are laid-off.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 411.

§ 412. Core Crew.

- (a) Covered Employers, may, if necessary, designate a core crew, which is exempt from the Indian preference requirements of this Chapter.
- (b) If a core crew is necessary, such core crew shall not exceed twenty-five percent (25%) of the total employees of the project/jobsite except as otherwise provided in paragraph (c) of this section.
- (c) The Director may, at his or her discretion, grant a Covered Employer a larger core crew designation upon a satisfactory demonstration by the Covered Employer that a larger core crew is necessary due to unique or specialized positions that are essential for the operation of the business. A Covered Employer may appeal the decision of the Director to the Board.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 412.

§ 413. Indian Preference in Contracting.

- (a) To the extent provided in § 415 of this Chapter, all Covered Employers shall give preference in contracting and subcontracting to Indian Certified Entities.
- (b) If one or more qualified Indian Certified Entities submit a bid that is within ten (10%) percent of the lowest competitive bid, the Covered Employer shall give one of the qualified Indian Certified Entities submitting such a bid the opportunity to negotiate an acceptable bid.
- (c) In accordance with §§ 406 and 408 of this Chapter, the Director shall formulate and the Board shall approve regulations providing guidance on implementing the

requirements of this section and for implementing Indian contracting preference when the awarding entity uses a method other than competition to select a contractor.

- (d) Whenever feasible, the Covered Employer shall submit to the Director, at least thirty (30) days in advance of the deadline for the submission of bids for a contract or subcontract, a list of all related contracts and subcontracts contemplated by the Covered Employer in order to enable the Director to give Indian Certified Entities the opportunity to prepare bids for such related contracts and subcontracts.
- (e) Any Covered Employer or Indian Certified Entity entering into a contract under the Indian preference provisions of this Chapter consents to the jurisdiction of the Band's Court of Central Jurisdiction for purposes of resolving any dispute arising under such contract, *provided* that nothing in this paragraph shall waive the sovereign immunity of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 413.

§ 414. Indian Certified Entities.

The Board shall establish a system for certifying firms as Indian Certified Entities. This system shall include detailed provisions to ensure that entities that are not truly 51% or more owned by Indians, or in which daily management and control is not provided by Indians, are not granted Indian preference certification.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 414.

§ 415. Applicability of Indian Preference in Contracting.

- (a) Except as otherwise provided in this section, the Indian preference in contracting required under § 413 of this Chapter shall apply only to contracts and subcontracts to be performed on the Reservation and shall not apply to the delivery of goods from a location outside the Reservation.
- (b) Notwithstanding any other provision in this Chapter, the Indian preference in contracting required under § 413 of this Chapter shall not apply to any contracts or subcontracts where the Board determines that application of that preference is specifically prohibited by Federal law.

- (c) The Indian preference in contracting required under § 413 of this Chapter shall not apply to contracts awarded by the Federal or a State government or their agencies or subdivisions. However, the Indian preference in contracting required under § 413 of this Chapter shall apply to all subcontracts awarded by a Federal or State contractor or grantee that is a Covered Entity, whether or not the prime contract was subject to that preference, except when the Board determines that application of that preference to that entity is specifically prohibited by Federal law.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 415.

§ 415A. Other Preferences to be Consistent.

Any provision for Indian Preference in employment or contracting contained in any Band policy, including any policy of the Corporate Commission, must be consistent with the Indian Preference in 18 MLBS §§ 410, 413, which provide first priority to Mille Lacs Band Members, second priority to members of another federally recognized Indian Tribe, and third priority to all others.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title IV, § 2.

SUBCHAPTER 4

FEES

Section

416. Fees.

417. Exempt Employers and Entities.

418. Fee Collection and Expenditure.

419. Monthly Statements.

§ 416. Fees.

Except as otherwise provided in § 417 of this Chapter, and except as prohibited by Federal law, the following fees are assessed on Covered Employers (other than the Band) for the privilege of doing business with the Band within the Reservation and to raise revenue for the operation of the TERO office and the enforcement of this Chapter.

- (a) Every Covered Employer other than the Band that enters into a contract with the Band totaling \$25,000.00 or more shall pay a one-time project fee of one half percent (0.5%) of the total amount of the contract. The Covered Employer shall pay the full amount of the fee before commencing work on the Reservation under the contract, *provided* that the Director may, for good cause shown by the Covered Employer, authorize the fee to be paid in installments over the life of the contract, and *provided further* that if the total amount of the contract is subsequently increased, the Covered Employer shall pay the additional amount due (0.5% of the increased amount of the contract) at the time of the increase. In all cases, the full amount shall be paid by the contractor upon the last pay application. A Covered Employer other than the Band that enters into a contract with the Band for less than \$25,000.00 shall pay the 0.5% fee on the total amount of the contract if the contract is amended or enlarged to \$25,000.00 or more within one (1) year after it was entered into. The fee imposed by this paragraph does not apply to a Covered Employer that enters into a subcontract made under a contract with the Band where the fee has been paid on the total amount of such contract.
- (b) All Covered Employers other than the Band shall, as a condition of doing business on the Reservation under a contract with the Band, consent to the Band entity awarding the contract paying the fee imposed under paragraph (a) of this section directly to the TERO prior to the commencement of work under the contract and subtracting the amount of the fee from the payments due to the Covered Employer under the contract. Prior to making the payment, the Band entity awarding the contract shall provide the contractor with a form prepared by the TERO, in which the contractor grants its consent to the payment of the TERO fee based on the amount it is entitled to receive from the Band entity. A contractor shall not be permitted to commence work on the Reservation until it has executed this form, *provided* that this provision shall not apply if the imposition of the fee with respect to the contractor is prohibited by Federal law.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 416.

§ 417. Exempt Employers and Entities.

The fees imposed in § 416 of this Chapter shall not be collected where applicable provisions of a Federal contract or grant prohibit the collection of such fees.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 417.

§ 418. Fee Collection and Expenditure.

- (a) The TERO fees shall be collected by the Director pursuant to TERO regulations. The fees shall be paid over to the Band's Office of Management and Budget (OMB) and shall be credited to the TERO account. These funds shall be expended solely by the TERO, pursuant to a duly approved budget in order to carry out the purposes of this Chapter.
- (b) The TERO Office, in conjunction with the Band's Department of Labor, shall prepare a quarterly report as to all employment and training expenditures. The report shall be made available to the Legislative Branch and Executive Branch each calendar quarter.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 418.

SUBCHAPTER 5

COMPLIANCE PLAN, NOTICE, AND CONTRACTS

Section

420. Compliance Plan.

421. Notice to Proposed Contractors and Subcontractors.

422. Contract Language Imposing TERO Requirements.

423. Model Language.

424. TERO Approval of Notices of Contracts and Awarded by Covered Entities.

§ 420. Compliance Plan.

- (a) All Covered Employers other than the Band shall, no less than ten (10) business days prior to commencing business on the Reservation, prepare and submit to the Director for his or her approval a plan setting out how the employer will comply with the requirements of this Chapter and its implementing regulations regarding Indian employment and Indian contracting preference. A Band-owned entity shall, no less than ten (10) business days prior to entering into a contract with a non-Band contractor to be performed on the Reservation, prepare and submit to the Director for his or her approval a plan setting out how the Band-owned entity will comply with the requirements of this Chapter and its implementing regulations regarding Indian employment and Indian contracting preference in connection with such contract. A Covered Employer already doing business on the Reservation on the effective date of this Chapter that has not prepared a Compliance Plan that has been approved by the

Director under this section shall come into compliance with the requirements of this section within thirty (30) business days of the effective date of this Chapter.

- (b) The payroll records of all Covered Employers other than the Band shall be submitted to the Director within thirty (30) days of his or her request. Any Covered Employer required to submit a certified payroll pursuant to federal law under the Davis-Bacon Act shall submit a copy of this certified payroll record to the Director.
- (c) All Covered Employers other than the Band are required to report relevant changes regarding their employees and employment positions to the Director when they submit the payroll records to the Director under paragraph (b) of this section, including but not limited to new positions, terminations, layoffs, promotions, and retirements.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 420.

§ 421. Notice to Proposed Contractors and Subcontractors.

- (a) Any Covered Employer, when issuing a notice of a proposed contract to be awarded by it, shall include provisions in the notice that inform a prospective contractor about the requirements established by this Chapter.
- (b) Any Covered Employer, when issuing a notice of a proposed subcontract to be awarded by it, shall include provisions in the notice that inform any prospective subcontractor about the requirements established by this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 421.

§ 422. Contract Language Imposing TERO Requirements.

Any Covered Employer, when awarding a contract or subcontract, shall include provisions that impose the requirements of this Chapter on the contractor or subcontractor, such that the legal document will fully bind the party to comply with the requirements of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 422.

§ 423. Model Language.

In order to implement the requirements of §§ 421 and 422 of this Chapter, the Director shall provide to the Covered Employer:

- (a) Model language that shall be included in the notice to prospective contractors and subcontractors, informing them of the requirements established by this Chapter; and
- (b) Model language to be included in each contract and subcontract, imposing the requirements set out in this Chapter as terms of the contract.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 423.

§ 424. TERO Approval of Notices of Contracts and Contracts Awarded by Covered Employers.

Each Covered Employer, prior to issuing notice of a contract to prospective contractors or subcontractors and prior to awarding a contract or subcontract, shall submit the proposed notice, contract or subcontract to the Director for approval.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 424.

SUBCHAPTER 6

PROHIBITION OF EMPLOYMENT DISCRIMINATION

Section

425. Prohibited Discrimination.

426. Religious Accommodation.

427. Discrimination based on Disability.

428. Discrimination based on Pregnancy.

429. Harassment.

430. Retaliation.

§ 425. Prohibited Discrimination.

Except as necessary to comply with the Indian employment preferences in Subchapter 3 of this Chapter, it shall be unlawful for a Covered Employer to do any of the following acts wholly or

partially based on the actual or perceived race, color, religion, national origin, sex, age, sexual orientation or political affiliation of any individual, unless such characteristic is a bona fide occupational qualification:

- (a) fail or refuse to hire, or discharge, any individual, or otherwise discriminate against any individual, with respect to his or her compensation, terms and conditions, or privileges of employment, including promotion;
- (b) discriminate in recruiting individuals for employment, or
- (c) limit, segregate, or classify employees in any way that would tend to deprive them of employment opportunities.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 425.

§ 426. Religious Accommodation.

It shall be an unlawful discriminatory practice for a Covered Employer to refuse to make a reasonable accommodation for an employee's religious or spiritual observance, unless doing so would cause undue hardship to the employer. A reasonable religious accommodation is any adjustment to the work environment that will allow the employee to practice his or her religion, such as flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers if approved by the authorized supervisor in accordance with the Band's Personnel Policy Manual. An accommodation would cause an employer undue hardship when it would require more than ordinary administrative costs, diminish efficiency in other jobs, infringe on other employees' job rights or benefits, impair workplace safety, cause co-workers to carry the accommodated employee's share of potentially hazardous or burdensome work, or conflict with another applicable law or regulation.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 426.

§ 427. Discrimination based on Disability.

- (a) It shall be unlawful for a Covered Employer to discriminate in any aspect of employment against a qualified individual with a disability because of that disability. However, it is not unlawful for a Covered Employer to use employment qualification standards, tests or selection criteria that are job related and consistent with business necessity that make an individual with a disability ineligible for an employment position where the individual could not perform the job even with reasonable

accommodation. Nothing in this section shall prohibit a Covered Employer from refusing to hire an individual with a disability for or from discharging such an individual from an employment position if the individual, because of the disability, is unable to perform the duties of the position, would perform the duties in a manner that would endanger the health and safety of the individual or others, or is unable to be at or go to or from the place at which the position is located.

- (b) Subject to the provisions of paragraph (c) of this section, a reasonable accommodation for an individual's disability may include but is not limited to making facilities readily accessible to and usable by disabled persons, job restructuring, modifying work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.
- (c) An accommodation is not required if it would impose an undue hardship on the employer's operation. In determining whether an undue hardship exists, employers may consider:
 - (1) the overall size of the business or organization with respect to number of employees and the number and type of facilities;
 - (2) the type of the operation, including the composition and structure of the work force, and the number of employees at the location where the employment would occur;
 - (3) the nature and cost of the accommodation;
 - (4) the reasonable ability to finance the accommodation at each site of business; and
 - (5) documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the disabled person or with knowledgeable disabled persons or organizations.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 427.

§ 428. Discrimination based on Pregnancy.

A Covered Employer shall treat women affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected, but similar in their ability or inability to work. This requirement shall include, but is not limited to, the requirement that a Covered Employer must treat an employee temporarily unable to perform the functions of her job

because of a pregnancy-related condition in the same manner as it treats other temporarily disabled employees.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 428.

§ 429. Harassment.

- (a) It shall be unlawful employment discrimination for a Covered Employer to subject an employee or applicant to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, as well as unwelcome comments, jokes, acts, and other verbal or physical conduct related to race, color, national origin, religion, sex, age, sexual orientation or disability when:
 - (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - (3) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- (b) A Covered Employer is responsible for acts of workplace harassment by its employees when the employer, its agents, or its supervisory employees knew of the conduct. A Covered Employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action upon learning of the harassment.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 429.

§ 430. Retaliation.

A Covered Employer may not retaliate against an individual for bringing a good-faith claim against the employer for a violation of this Chapter or because the individual opposed a practice he or she believed to violate this Chapter or participated in an enforcement proceeding pursuant to Subchapter 9 of this Chapter. The firing, demoting, harassing or taking of any other adverse action against an individual shall constitute retaliation within the meaning of this section. Any

retaliation in violation of this section is itself a violation of this Chapter and is subject to enforcement proceedings pursuant to Subchapter 9 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 430.

SUBCHAPTER 7

EMPLOYEE WAGE AND HOUR

Section

- 431. Minimum Wage.**
- 432. Prevailing Wage.**
- 433. Maximum Hours.**
- 434. Exemptions.**
- 435. Private Right of Action.**
- 436. Statute of Limitations.**
- 437. Guidance.**
- 438. Fringe Benefits.**

§ 431. Minimum Wage.

Any employee who is employed by a Covered Employer shall be paid an hourly wage of not less than \$7.50 per hour or the current United States Federal Government's minimum wage requirement, whichever is higher.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 431.

§ 432. Prevailing Wage.

All Covered Employers are required to compensate construction laborers according to the prevailing wage set by the U.S. Department of Labor according to the Davis-Bacon Act for the county in which the work shall commence, unless the Board implements Band prevailing wage rates by rule, regulation or guideline, in which case the Band prevailing wage determination shall apply.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 432.

§ 433. Maximum Hours.

No Covered Employer shall employ any of its employees for a work week longer than forty (40) hours unless such employee receives compensation for the additional hours at a rate not less than one and one-half times the regular rate at which the employee is compensated.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 433.

§ 434. Exemptions.

The provisions of this Subchapter shall not apply with respect to any employee employed in a bona fide executive, administrative, or professional capacity, or any other exemption category in the Federal Fair Labor Standards Act (FLSA) of 1938, 29 U.S.C., § 213, including all future amendments thereto, or in regulations implementing that Act as promulgated by the U.S. Department of Labor.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 434.

§ 435. Private Right of Action.

Any individual aggrieved under this Subchapter may seek retroactive payment of unpaid minimum wages or unpaid overtime compensation against a Covered Employer pursuant to the enforcement provisions set out in Subchapter 9 of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 435.

§ 436. Statute of Limitations.

Any action to secure unpaid wages or unpaid overtime compensation must be commenced within one (1) year after the date on which such wages or overtime compensation should have been included in an employee's paycheck, regardless of the date of actual discovery.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 436.

§ 437. Guidance.

For the purposes of interpreting this Subchapter only, the Board and the Band's Court of Central Jurisdiction may look to the Federal Fair Labor Standards Act (FLSA) of 1938, 29 U.S.C., §§ 201-219, its implementing regulations, and related case law for persuasive guidance, *provided* that nothing in this section shall be construed as an adoption by the Band of that Act or its implementing regulations.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 437.

§ 438. Fringe Benefits.

A Covered Employee must give an employee engaged in construction the option of electing to receive any amount to which he or she is entitled as prevailing wage fringe benefits as a part of his or her hourly pay unless it is determined that the application of this provision is specifically prohibited by Federal law. The prevailing wage fringe benefits to which the employee is entitled shall include, but not be limited to, the fringe benefit determination made by the U.S. Secretary of Labor pursuant to the Federal Davis Bacon Act or by the Board pursuant to this Chapter. Every Covered Employer engaged in projects subject to the Federal Davis-Bacon Act shall offer this option to each employee at the time he or she is first employed.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 438.

SUBCHAPTER 8

OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES

Section

439. Duties of Employers and Employees.

440. Adoption of Rules of Federal Occupational Safety and Health Administration.

441. Enforcement.

§ 439. Duties of Employers and Employees.

- (a) Each Covered Employer shall:
 - (1) furnish employees with a place and condition of employment that is free from recognized hazards that may cause or are likely to cause death or serious physical harm to the employees; and
 - (2) comply with all occupational safety and health rules promulgated or adopted by the Band pursuant to this Subchapter.
- (b) Each employee of a Covered Employer shall comply with all occupational safety and health rules promulgated or adopted pursuant to this Subchapter that are applicable to the actions and conduct of the employee.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 439.

§ 440. Adoption of Rules of Federal Occupational Safety and Health Administration.

The rules and regulations of the Federal Occupational Safety and Health Administration ("OSHA") of the U.S. Department of Labor, including all future rules or amendments to existing rules, promulgated pursuant to the authority granted to OSHA by the Occupational Safety and Health Act of 1975, (29 U.S.C., §§ 651-678) are hereby adopted by the Band and apply to all Covered Employers.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 440.

§ 441. Enforcement.

- (a) The Director is authorized to enforce the rules adopted in § 440 of this Chapter pursuant to the enforcement provisions set out in Subchapter 9 of this Chapter, to the extent his or her authority has not been preempted by Federal law.
- (b) For any employer over whom the Director's authority to enforce the requirements of this Subchapter has been preempted by Federal law and for employers within the Reservation who are not subject to the jurisdiction of the Band, the Director shall work cooperatively with Federal and State officials responsible for enforcing occupational safety and health requirements applicable to such employers to ensure maximum enforcement.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 441.

SUBCHAPTER 9

ENFORCEMENT

Section

442. Applicability.

443. Investigations.

444. Complaints.

445. Complaints against the Band.

446. Resolution of Violations.

447. Hearing Procedures.

448. Sanctions.

449. Appeals.

450. Monitoring and Coordination with other Tribal, State and Federal Laws.

§ 442. Applicability.

The provisions set out in this Subchapter shall be used to enforce the requirements set out in this Chapter, unless a specific enforcement provision is contained in a particular Subchapter, in which case the latter provision shall take priority.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 442.

§ 443. Investigations.

- (a) On his or her own initiative or on the basis of a complaint filed pursuant to § 444 or any other provision of this Chapter, the Director or any field compliance officer designated by the Director may make such public or private investigations within the Reservation as the Director deems necessary to:
 - (1) ensure compliance with a provision in this Chapter;
 - (2) determine whether any Covered Employer has violated any provision of this Chapter or its implementing regulations; or
 - (3) aid in prescribing rules, regulations or policies hereunder.
- (b) Separate from acting on any complaint filed, the Director shall conduct regular compliance reviews to ensure that all Covered Employers are complying with the requirements of this Chapter.
- (c) The Director or any field compliance officer designated by the Director may enter the place of business or employment of any Covered Employer for the purpose of an investigation or compliance review, at said place of business or employment, in a manner consistent with good safety practices and with the orderly operation of the business activity. The Director or officer may:
 - (1) interview any employee or agent of the Covered Employer;
 - (2) review and copy any documents; and
 - (3) carry out any other activity the TERO Director or officer deems necessary to accomplish the investigation or compliance review, provided that, the Director or officer shall comply with the requirements of paragraph (e) of this section when reviewing or copying any confidential documents.
- (d) For the purpose of investigations, compliance reviews, or hearings, which, in the opinion of the Director or the TERO Commission, are necessary and proper for the enforcement of this Chapter, the Director or the chairperson of the TERO Commission may administer oaths or affirmations, subpoena witnesses, take evidence, and require the production of books, papers, contracts, agreements, or other documents, records or information that the Director or the TERO Commission deems relevant to the inquiry.
- (e) Any State or Federal tax records, trade secrets, or privileged or confidential commercial, financial, or employment information subpoenaed or otherwise obtained pursuant to the provisions of this Chapter or used at a compliance hearing or subsequent appeal to the Band's Court of Central Jurisdiction: (1) shall be regarded as confidential records of the TERO Commission or the Court; (2) shall not be

opened to public inspection; (3) shall be used only by the Director, the TERO Commission, or parties to a compliance hearing or subsequent appeal to the court; and (4) shall be used in a manner that, to the maximum extent possible consistent with the requirement of fairness to the parties, protects the confidentiality of the documents.

- (1) Any person, including but not limited to any employee or official of the Band, who willfully discloses such confidential records, except as expressly authorized by this Chapter or Court order, may be subject to a civil fine not to exceed \$500.00.
- (f) Documents obtained from a Covered Employer under this section shall be returned to the employer at the conclusion of any investigation, compliance review, or hearing, including the end of any available appeal period.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 443.

§ 444. Complaints.

Any individual, group of individuals, business or organization that believes any Covered Employer other than the Band, or the Director or other TERO staff, has violated any requirement imposed by this Chapter or any regulation issued pursuant to it, may file a complaint with the Director or, if the complaint is against the Director or other TERO staff, with the chairperson of the TERO Commission. The complaint shall be in writing and shall provide such information as is necessary to enable the Director or an independent party appointed by the TERO Commission to carry out an investigation. Within fifteen (15) days after receipt of the complaint, and on a regular basis thereafter, the Director or the independent party appointed by the TERO Commission shall provide the complaining party with a written report on the status of the complaint. The Director or the independent party appointed by the TERO Commission shall, within thirty (30) days of the date on which a complaint is filed, complete an investigation of the complaint. Upon request, the TERO Commission may grant the Director or the independent party appointed by the TERO Commission an extension of no more than thirty (30) days to complete the investigation. If upon investigation the Director or the independent party appointed by the TERO Commission has reason to believe a violation has occurred, he or she shall proceed pursuant to the provisions of this Chapter.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 444.

§ 445. Complaints against the Band.

Any individual who believes the Band, including any office, division, branch, subsidiary entity or commercial enterprise of the Band other than the Director or other TERO staff, has violated any requirement imposed by this Chapter or any regulation issued pursuant to it may file a complaint with the Director, but only after the individual has either:

- (a) Filed a complaint with, and exhausted the administrative remedies provided by the involved office, division, branch, subsidiary entity, or commercial enterprise of the Band, or
- (b) Filed a complaint with the involved office, division, branch, subsidiary entity, or commercial enterprise of the Band and sixty (60) days have passed since filing and no meaningful action has been taken on the complaint by that office, division, subsidiary entity, or commercial enterprise.

Upon receiving a complaint that meets the requirements of this section, the Director shall proceed in the same manner as he would on a complaint filed pursuant to § 444 of this Chapter, except that the Director and the TERO Commission shall take into consideration any written decision concerning the complaint issued by the office, division, branch, subsidiary, entity or commercial enterprise of the Band that is the subject of the complaint.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 445.

§ 446. Resolution of Violations.

- (a) If, after conducting an investigation or compliance review, the Director has reasonable cause to believe a violation of this Chapter or any regulation issued pursuant to it has occurred (including a failure by a party to comply with a subpoena or other request during an investigation), the Director shall notify the Covered Employer or Covered Entity in writing, delivered by registered mail, specifying the alleged violations.
- (b) The Director shall make a good faith effort to achieve an informal settlement of the alleged violation by meeting with the Covered Employer and taking other appropriate action.
- (c) If the Director is unable to achieve an informal settlement, he shall issue a formal notice of non-compliance, which shall advise the Covered Employer of its right to request a hearing. The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the Covered Employer with a reasonable time, which shall not be less than ten (10) days from the date of service of such notice, to comply. If the Director has reason to

believe that irreparable harm will occur during that period, the Director may require that compliance occur in less than ten (10) days.

- (d) If the Covered Employer disputes the violation, as provided for in the formal notice, the Covered Employer may request a hearing before the TERO Commission, which shall be held no sooner than five (5) days and no later than thirty (30) days after the date for compliance set forth in the formal notice. The Director or the Covered Employer may ask the TERO Commission to hold the hearing sooner. The TERO Commission shall grant such a request only upon a showing that an expedited hearing is necessary to avoid irreparable harm.
- (e) If a Covered Employer fails or refuses to comply and does not request a hearing, the Director shall request the chairperson of the TERO Commission to convene a session of the TERO Commission for the purpose of imposing sanctions on the Covered Employer. This session shall take place as soon as necessary to avoid irreparable harm.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 446.

§ 447. Hearing Procedures.

- (a) Any hearing held pursuant to this Chapter shall be conducted by the TERO Commission. The hearing shall be governed by rules of practice and procedure that are adopted by the TERO Commission. The Director and the Covered Employer shall have the right to call and cross examine witnesses, as well as present physical evidence. The TERO Commission may consider any evidence that it deems relevant to the hearing. The TERO Commission shall not be bound by technical rules of evidence in the conduct of hearings under this Chapter, and the presence of informality in any proceeding, as in the manner of taking testimony, shall not invalidate any order, decision, rule or regulation made, approved, or confirmed by the TERO Commission. The Director shall have the burden of proving that the Covered Employer violated this Chapter by a preponderance of the evidence. An audio recording shall be made of each hearing. No stenographic record of the proceedings and testimony shall be required except upon arrangement by, and at the cost of, the Covered Employer.
- (b) The Director shall prosecute the alleged violation on behalf of the TERO. During the hearing and at all stages of the enforcement process provided for in this Chapter, the Director may be represented by the Band Solicitor General's Office. If the Covered Employer is an office or subsidiary of the Band Government and the Band Solicitor General's Office determines it would create a conflict to represent the Director, the Solicitor General may obtain outside legal counsel for the Director.

- (c) The TERO Commission shall sit as an impartial judicial body. The TERO Commission shall establish procedures and safeguards to ensure that the rights of all parties are protected and that there is no improper contact or communication between the TERO Commission and the Director during the hearing phase of the enforcement process.
- (d) If the TERO Commission requires legal assistance during the hearing process, or at any other phase of the enforcement process, and it would be a conflict of interest for the Band Solicitor General's Office to provide such representation, the Solicitor General shall attempt to retain outside legal counsel.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 447.

§ 448. Sanctions.

- (a) If, after a hearing, the TERO Commission determines that the alleged violation of this Chapter or a regulation issued pursuant to it has occurred, and that the party charged has no adequate defense in law or fact, or if a party was issued a formal notice of noncompliance and failed to request a hearing, the TERO Commission may:
 - (1) Deny such party the ability to commence business on lands owned by or for the benefit of the Band or its members on the Reservation (provided that the party is not an office, division, branch, subsidiary, entity or commercial enterprise of the Band);
 - (2) Suspend such party's business activity on lands owned by or for the benefit of the Band or its members on the Reservation (provided that the party is not an office, division, branch, subsidiary, entity or commercial enterprise of the Band);
 - (3) Terminate such party's business activity on lands owned by or for the benefit of the Band or its members on the Reservation (provided that the party is not an office, division, branch, subsidiary, entity or commercial enterprise of the Band);
 - (4) Deny the ability of such party to conduct any further business with the Band or on lands owned by or on behalf of the Band or its members on the Reservation (provided that the party is not an office, division, branch, subsidiary, entity or commercial enterprise of the Band);
 - (5) Impose a civil fine of up to \$500.00 per violation per day following the date for compliance;

- (6) Order such party to make payment of back pay or other damages to any aggrieved party;
 - (7) Order such party to dismiss any employees hired in violation of the Band's employment rights requirements;
 - (8) Reimburse any party who improperly paid a TERO fee or overpaid said fee, but no interest shall be paid in such cases; and/or
 - (9) Order the party to take such other action as is necessary to ensure compliance with this Chapter or to remedy any harm caused by a violation of this Chapter, consistent with the requirements of the laws of the Band and the Indian Civil Rights Act, 25 U.S.C., § 1301, et seq.
- (b) The TERO Commission's decision shall be in writing and shall be served on the charged party by registered mail or in person by an employee of the TERO no later than thirty (30) days after the close of the hearing. The decision shall contain findings of fact sufficient to support the TERO Commission's ordered relief, or lack thereof. Upon a showing by the Director or the charged party that further delay will cause irreparable harm, the TERO Commission shall issue its decision within ten (10) days after the close of the hearing. If the party fails to comply with the TERO Commission's decision within ten (10) days, the Director may file for an injunction in the Band's Court of Central Jurisdiction. The Court shall grant such injunctive relief as is necessary to prevent irreparable harm pending an appeal or expiration of the time for the party to file an appeal.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 448.

§ 449. Appeals.

- (a) An appeal to the Band's Court of Central Jurisdiction may be taken from any formal order of the TERO Commission by any party adversely affected thereby, including a complainant. To take such an appeal, a party must file a notice of appeal in the Band's Court of Central Jurisdiction and serve a copy of the notice of appeal on the Director and any other party to the proceeding no later than twenty (20) days after the party receives a copy of the TERO Commission's decision.
- (b) The notice of appeal shall:
 - (1) Set forth the order from which the appeal is taken;
 - (2) Specify the grounds upon which reversal or modification of the order is sought;

- (3) Be signed by the appellant or his legal representative; and
 - (4) Comply with any other requirements for actions filed in the Band's Court of Central Jurisdiction, as established by that court.
- (c) Except as provided elsewhere in this Chapter, the order of the TERO Commission shall be stayed pending the determination of the Court. The Director may petition and, for good cause shown, the Court may order the party filing the appeal to post a bond sufficient to cover the monetary damages that the TERO Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the TERO Commission's order in the event that order is upheld by the Court.
- (d) The Court shall review the decision of the TERO Commission de novo.
- (e) If a party has failed to come into compliance with (1) a decision of the TERO Commission from which no appeal has been taken, or (2) a decision of the Court, within 20 days after receipt of notice of such decision, the Director shall petition the Court and the Court shall grant such orders as are necessary and appropriate to enforce the orders of the TERO Commission or Court.
- (f) If the order of the TERO Commission is reversed or modified, the Court shall specifically direct the TERO Commission as to further action the TERO Commission shall take in the matter, including making and entering any order or orders in connection therewith, and the limitations, or conditions to be contained therein.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 449.

§ 450. Monitoring.

If, when carrying out inspections at work sites or otherwise carrying out their responsibilities under this Chapter, the Director or TERO compliance officers have reason to believe that a requirement of a Tribal, Federal, state or local law, act or regulation, other than the ones included in this Chapter, may have been violated by a party, the Director and TERO compliance officers are authorized to document such possible violation(s), to report said violation(s) to the appropriate enforcement agency, and, to the extent that resources permit and the Director determines it to be appropriate, assist that agency in its attempt to investigate and cure the possible violation.

Historical and Statutory Notes

Source:

Band Ordinance 15-14, Title III, Exhibit A, § 550.

CHAPTER 6

MINIMUM WAGE

Section

- 501. Payment of Minimum Wages.**
- 502. Gratuities Not Applies.**
- 503. Sharing of Gratuities.**
- 504. Unreimbursed Expenses Deducted.**
- 505. Expense Reimbursement.**
- 506. Overtime.**
- 507. Work Breaks.**
- 508. Meal Breaks.**
- 509. Authorized Leave.**
- 510. Application.**

Historical and Statutory Notes

The Preamble and § 11 of Band Ordinance 30-98 (this Chapter) provides: “Preamble. It is enacted by the band Assembly of the Mille Lacs Band of Ojibwe for the purpose of establishing minimum wage standards for workers within the territorial jurisdiction of the Mille Lacs Band.”

“Section 11. Effective Date. This Act shall become effective October 1, 1998.”

The title of Band Ordinance 19-08 is: “An ordinance amending the minimum wage standard for workers within the territorial jurisdiction of the Mille Lacs Band of Ojibwe in order to comply with the federal guidelines.”

The Preamble and § 11 of Band Ordinance 19-08 provides: “Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending the minimum wage standards for workers within the territorial jurisdiction of the Mille Lacs Band of Ojibwe.”

“Section 11. Effective Date. This Act shall become effective July 24, 2008.”

§ 501. Payment of Minimum Wages.

- (a) For purposes of this Chapter, the terms defined in this paragraph have the following meaning:
 - (1) **“Large Employer”** means an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.00, exclusive of excise and sales taxes that are collected at the retail level.
 - (2) **“Mille Lacs Band”** or **“Band”** means the Mille Lacs Band of Ojibwe or any political subdivision thereof.

- (3) **“Salary”** means wages paid periodically in contrast to wages based on an hourly rate.
- (b) Except as may otherwise be provided for in this Chapter, every “Large Employer” or the “Band” must pay wages to each employee in the minimum amount of \$7.50 per hour unless a higher amount is required under applicable law.
- (c) Except as may otherwise be provided for in this Chapter, every “Small Employer” must pay each wages to each employee in the minimum amount of \$6.55 per hour unless a higher amount is required under applicable law.
- (d) A “Large Employer” must pay each employee at a rate of at least the minimum wage set by this section without the reduction for training wage or full-time student status allowed by federal law.
- (e) Any governmentally funded program, whether Band, federal or state, that employs students enrolled in educational classes is expressly exempt from the provisions of this section.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 1.
Band Ordinance 19-08, § 1.

Prior law:

Band Ordinance 19-08, § 1(c).
Band Ordinance 19-08, § 1 (d).

§ 502. Gratuities Not Applied.

- (a) An employer may not directly or indirectly credit, apply or otherwise utilize gratuities towards payment of the minimum wage set by this section or any other applicable law.
- (b) Notwithstanding any provision of this Chapter to the contrary, an employer shall not be required to pay an employee receiving 30% or more of their earnings from tips or gratuities, the amount of the Band’s minimum wage rate prescribed in § 501 of this Chapter. Instead such an employee shall be entitled to receive a minimum wage at the federal rate for employees of this type.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 2.
Band Ordinance 19-08, § 2.

§ 503. Sharing of Gratuities.

- (a) All tips or gratuities may be retained by employees receiving such tips or gratuities.
- (b) Notwithstanding the provisions of paragraph (a) of this section, any tip or gratuity received by an employee and deposited in a fund or pool operated for the benefit of such type of employees to be shared equally shall be permissible.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 3.
Band Ordinance 19-08, § 3.

§ 504. Expenses that are Not Reimbursed that May Be Deducted.

Deductions, direct or indirect, from wages or gratuities not authorized under this section may only be taken as otherwise authorized by law. Deductions, direct or indirect, up to the full cost of an individual's uniform or individual's piece of work equipment as listed below, may not exceed fifty dollars and no cents (\$50.00). No deductions, direct or indirect may be made for the items listed below which when subtracted from wages would reduce the wage below the allowable minimum:

- (a) Purchased or rented uniforms or specifically designed clothes required by the employer, due to the nature of the employment or by law as a condition of the employment, which are not generally appropriate for use except in that employment;
- (b) Purchased or rented equipment used in employment, except as tools of trade, motor vehicle or any other equipment which may be used outside the employment;
- (c) Travel expenses in the course of employment except those incurred in traveling to and from the employee's residence and place of employment.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 4.
Band Ordinance 19-08, § 4.

§ 505. Expense Reimbursement.

An employer, at the termination of an employee's employment, must reimburse the full amount deducted, directly or indirectly, for any of the items listed in § 504 of this Chapter. When reimbursement is made, the employer may require the employee to surrender any existing items for which the employer provided reimbursement.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 5.
Band Ordinance 19-08, § 5.

§ 506. Overtime.

- (a) An employer may not employ an employee for a workweek longer than (40) hours, unless the employee receives compensation for employment in excess of (40) hours at a rate of at least 1½ times the employee's wage. An employer may also grant compensatory time off at the rate of 1½ hours for each hour worked in excess of (40) hours in lieu of monetary compensation.
- (b) An employer does not violate this § 506 if the employer and employee agree before the performance of a work week, to accept to work period of (14) conservative days in lieu of a work week of (7) consecutive days. In such an arrangement, overtime compensation for the employment in excess of eight hours in any workday and in excess of eighty (80) hours in the fourteen (14) day period, the employee shall receive pay or compensatory time off at a rate not less than 1½ times the regular rate at which the employee is employed.
- (c) This section shall not apply to employees receiving a Salary.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 6.
Band Ordinance 19-08, § 6.

§ 507. Work Breaks.

An employer must allow each employee a 15-minute break from work within each four consecutive hours of work.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 7.
Band Ordinance 19-08, § 7.

§ 508. Meal Breaks.

- (a) An employer must permit each employee who is working for eight or more hours at least 30 minutes to eat a meal.
- (b) Nothing in this section requires the employer to pay the employee during the meal break.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 8.
Band Ordinance 19-08, § 8.

§ 509. Authorized Leave.

Any employee may not unreasonably be denied time-off from work to attend Midewin or Drum Society Ceremonies.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 9.
Band Ordinance 19-08, § 9.

§ 510. Application.

The provisions of this Chapter shall apply within the territorial jurisdiction of the Mille Lacs Band of Ojibwe.

Historical and Statutory Notes

Source:

Band Ordinance 30-98, § 10.
Band Ordinance 19-08, § 10.

CHAPTER 7

RIGHT TO WORK

Section

601. Findings and Determinations.

602. Definitions.

603. Right to Work.

604. Prohibition of Strikes.

605. Jurisdiction.

606. Civil Remedies.

607. Complaint Process.

608. Enforcement.

Historical and Statutory Notes

The Title of Band Ordinance 55-08 (this Chapter) is: “An Ordinance amending Title 18 of Mille Lacs Band Statutes Annotated (Commercial Practices) to add Chapter 7 – Right to Work.

The preamble of Band Ordinance 55-08 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Title 18 of the Mille Lacs Band Statutes Annotated (Commercial Practices) to add Chapter 7 to be entitled ‘Right to Work.’”

§ 601. Findings and Determinations.

The Band Assembly hereby finds and determines:

- (a) The Mille Lacs Band of Ojibwe has the inherent power to maintain a Band government which may enact laws to preserve the sovereignty of the Band and to promote and maintain individual rights and promote the general welfare of the people of the Band.
- (b) With the recent expansion of economic development, employment within the jurisdiction of the Band has grown substantially, and the Band has exercised its sovereignty in enacting laws to govern employment relationships.
- (c) The right to work on land within the jurisdiction of the Band is a fundamental right that should not be abridged.
- (d) No person should be forced to join or be penalized for not joining a union or other collective bargaining organization and should be able to make that choice freely and voluntarily.
- (e) The Mille Lacs Band of Ojibwe enacts this law governing employment and labor pursuant to the Band’s inherent sovereign authority to govern activities on lands within the jurisdiction of the Band, whether the activities are of Band members, nonmembers, Indians, or non-Indians, and whether based on consensual relationships with the Band or conduct which impacts and affects the health, safety, political and economic integrity of the Band and the community including Band members, employees, vendors, patrons and others.

Historical and Statutory Notes

Source:

Band Ordinance 55-08, § 1.

§ 602. Definitions.

- (a) **“Employer”** means any person, firm, association, corporation, government or any subdivision thereof and other entity operating within the jurisdiction of the Band and directly or indirectly employing one or more persons to perform work, except for any such person, firm, association, or corporation which has a principal place of business located outside the jurisdiction of the Band and operates pursuant to an Agreement with the Band or Band entity to perform construction related activities.
- (b) **“Labor organization”** means any organization or agency or group of employees or employee committee or plan in which employees participate that is organized or exists for the purpose of dealing with an employer or employers concerning hours of employment, wages, rates of pay, working conditions or grievances of any kind relating to employment.
- (c) **“Labor dispute”** includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment whether or not the disputants stand in the proximate relationship of employer and employee.
- (d) **“Person”** means any individual, labor organization, corporation, partnership, company, association or other legal entity, including the Mille Lacs Band of Ojibwe and any subdivision thereof and the Corporate Commission of the Mille Lacs Band of Ojibwe.
- (e) **“Strike”** means any temporary stoppage, reduction, disruption or slowdown of work by the concerted action of two or more employees as a result of a labor dispute.
- (f) **“Union dues”** means dues, fees, assessments or other charges of any kind or amount or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents and includes payments to any charity or other third party in lieu of such payments to a labor organization.

Historical and Statutory Notes

Source:

Band Ordinance 55-08, § 2.

§ 603. Right to Work.

- (a) No person shall be required, as a condition of employment, or continuation of employment, within the jurisdiction of the Band, to do any of the following:
 - (1) Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
 - (2) Become or remain a member of a labor organization; or
 - (3) Pay union dues as defined in this chapter.
- (b) Any agreement between any labor organization and any employer that violates subsection (a) or otherwise violates the rights of persons defined by this chapter is of no legal effect. This chapter does not bar any person from voluntarily obtaining or maintaining membership in any labor organization or from voluntarily paying union dues as defined in this chapter.

Historical and Statutory Notes

Source:

Band Ordinance 55-08, § 3.

§ 604. Prohibition of Strikes.

- (a) No person shall engage in a strike and no person shall cause, instigate, encourage, or condone a strike.
- (b) For purposes of this section, if a person is absent from work, or abstains wholly or in part from the full performance of his or her normal duties, on the date or dates when a strike occurs, it shall create a rebuttable presumption to have engaged in such strike on such date or dates.

Historical and Statutory Notes

Source:

Band Ordinance 55-08, § 4.

§ 605. Jurisdiction.

The Court of Central Jurisdiction shall have jurisdiction over all causes of action alleging violations of this chapter. Nothing provided in this chapter shall be deemed to be a waiver of the sovereign immunity of the Mille Lacs Band of Ojibwe from suit. Nothing provided in this chapter shall diminish the immunity protections of 2 MLBS § 5 and 16 MLBS § 109.

Historical and Statutory Notes

Source:

Band Ordinance 55-08, § 5.

§ 606. Civil Remedies.

Any person injured as a result of any violation or threatened violation of the provisions of this chapter shall be entitled to petition the Court of Central Jurisdiction for injunctive relief from or against any person who violated or threatens any violation of this chapter, and may, in addition thereto, file a claim to recover actual damages resulting from the violation or threatened violation. The remedy shall be independent of, and in addition to, any other penalties and remedies prescribed by applicable law.

Historical and Statutory Notes

Source:

Band Ordinance 55-08, § 6.

§ 607. Complaint Process.

- (a) **Petition.** Any person injured as a result of any violation or threatened violation of the provisions of this chapter shall first petition the Court of Central Jurisdiction for a show cause hearing. The Petition shall include a statement of the facts constituting the violation or threatened violation of the provisions of this chapter and the specific relief requested. The Petition shall also be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.
- (b) **Notice of Hearing.** The Clerk of Court shall schedule a hearing within 30 days after receipt of the Petition. The Clerk shall submit a Notice of Hearing to the person against whom the action is being instituted. The Notice shall state that the person has a right to appear at this hearing on his or her own behalf or with an attorney. The person shall have a right to present defenses to the claim and to state the reasons why the Petition should be denied. The Petition shall clearly state a claim to the violation of this chapter and the damages sought. Finally, the notice shall clearly state that if the person fails to appear at the hearing the Court has the authority to enter a default judgment on behalf of the Petitioner and direct that the requested relief be immediately granted.
- (c) **Emergency Procedure.**
 - (1) Where an application under this chapter alleges an immediate and present violation or threatened violation of § 4 of this chapter, the court may grant an ex-parte temporary order enjoining the violation or threatened violation.

- (2) An ex-parte temporary order shall be effective for a fixed period not to exceed 14 days. A full hearing as provided by this chapter shall be set for not later than 7 days from the issuance of the temporary order. The respondent shall be served forthwith a copy of the ex-parte order along with a copy of the petition and affidavit and notice of the date set for the hearing.
- (3) Service of Order. Any order issued under this chapter shall be personally served upon the respondent.

Historical and Statutory Notes

Source:

Band Ordinance 55-08, § 7.

§ 608. Enforcement.

- (a) The Court of Central Jurisdiction shall have the judicial authority to provide an equitable remedy in the execution its judgments and determinations to promote the general welfare, preserve and maintain justice, and to protect the rights of all persons under the jurisdiction of the Mille Lacs Band of Ojibwe.
- (b) The Court of Central Jurisdiction shall have the power to issue orders to prevent an injustice or injury, require action or conduct, and issue any other orders as are necessary in the furtherance of justice.

Historical and Statutory Notes

Source:

Band Ordinance 55-08, § 8.

TITLE 19 – MOTOR VEHICLES

<u>Chapter</u>	<u>Section</u>
1. General Provisions	1
2. Registration	101
3. Certificates of Title	201
4. Fraudulent Practices	301
5. Traffic Violations	401
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Historical and Statutory Notes

The Preamble of Band Statute 1097-MLC-52 provides: "It is, enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of establishing standards for the registration of motor vehicles, the issuance of certificates of title for conveyance of ownership, any subsequent transfer of title, establishing lawful regulations for the operation of motor vehicles and other related purposes."

Band Statute 1097-MLC-52, §§ 39 and 48 provide: "Section 39. Severability. If any provision of this Chapter or the application thereof to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of the Chapter which can be given effect without the invalid provision or application and to this end the provisions of this Chapter are declared severable."

"Section 48. Director of Reciprocity. The Director of Reciprocity, in and for the Non-Removable Mille Lacs Band of Chippewa Indians for the purpose of conducting relations pursuant to the terms of said agreement with the State of Minnesota, Department of Public Safety and any other State is hereby designated as Margie Anderson.

"Section 48.01. The Secretary Treasurer, Douglas Sam, the Director of Reciprocity, Margie Anderson, and the Solicitor General, Jay Kanassatega are hereby authorized to execute a Reciprocity Agreement with the State of Minnesota Department of Public Safety. The said Reciprocity Agreement shall remain in full force and effect until repealed by formal legislative act of the Band Assembly, concurrence by the Chief Executive pursuant to provisions of Band Statute 1141-MLC-2, Section 17 [now 3 MLBS § 16] and proper notification to the State of Minnesota."

Cross References

Application of provisions of this title to watercraft, *see* 20 MLBS § 12.
Motor vehicle excise tax, *see* 22 MLBS §§ 401, 402.

CHAPTER 1

GENERAL PROVISIONS

Section

1. Findings and Determinations.
2. Definitions.
3. Reservation of Right.
4. Administrative Expenses.
5. Revenue Distribution.
6. American Association of Motor Vehicle Administrators: Policy Positions.
7. Powers and Duties of Secretary.
8. Cancellation of Title or Registration.
9. Deputy Registrar of Motor Vehicles.
10. Removal of Deputy Registrar of Motor Vehicles.
11. Court of Central Jurisdiction.
12. Limited Waiver of Sovereign Immunity.

13. **Solicitor General Obligations.**
14. **State and Territorial Motor Vehicle Statutes and Judicial Proceedings; Full Faith and Credit.**
15. **State and Territorial Non-Judicial Motor Vehicle Records; Full Faith and Credit.**
16. **Motor Vehicle Registration Forms.**
17. **Applicability of 24 MLBS § 3301 et seq., Remedies for Creditors, and 18 MLBS § 301, Uniform Commercial Code.**

Historical and Statutory Notes

The Title of Band Ordinance 34-12 is “An Ordinance amending Title 19 of the Mille Lacs Band Statutes Annotated entitled Motor Vehicles to amend Section 9 (Deputy Registrar of Motor Vehicles) in order to create a regular full-time Legislative employee position.”

The Preamble of Band Ordinance 34-12 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for purposes of converting the position of Deputy Registrar of Motor Vehicles from an independent contractor to a regular full-time Legislative employee position.”

§ 1. Findings and Determinations.

- (a) The Band Assembly hereby finds that the registration of motor vehicles and the imposition of motor vehicle excise taxes for the privilege of using a motor vehicle on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians owned by enrolled members, who reside on said lands, is consistent with the statutory authority of Indian tribes across the United States of America which has been recognized by the United States Supreme Court in *Washington V. Confederated Tribes*, 447 U.S. 134 (1980).
- (b) The Band Assembly hereby finds that the agreement relating to the refundment of sales and use tax and motor vehicle excise taxes which purports to grant continuing authority to the State of Minnesota to collect taxes from members of any constituent Bands of the Non-Removable Mille Lacs Band of Chippewa Indians pursuant to 25 U.S.C. 1322 and 1326 was ultra vires, to each party; and, that the Solicitor General properly declared such agreement null and void.
- (c) The Band Assembly hereby declares that the intent and purpose of Title 19 of the Mille Lacs Band Statutes Annotated is to obtain and retain forever the sovereign rights of the people who comprise the constituent Bands of the Non-Removable Mille Lacs Band of Chippewa Indians to be free from all taxation imposed by the State of Minnesota and any of its political sub-divisions by the imposition of like taxes to support government services for the people and by the people, and the same shall be liberally construed to effect this purpose. Nothing herein shall be construed as a waiver of sovereign immunity by the Non-Removable Mille Lacs Band of Chippewa Indians in any court of competent jurisdiction with the exception of limited waivers to the Court of Central Jurisdiction authorized herewith.

- (d) The Band Assembly hereby finds and determines that the State of Minnesota has continued to collect motor vehicle excise taxes from enrolled members of the Non-Removable Mille Lacs Band of Chippewa Indians since December 14, 1974 in violation of the United States Supreme Court decision, *Bryan V. Itasca County*, 426 US 373 (1976).
- (e) The Band Assembly hereby finds and determines that the development and implementation of this motor vehicle licensing statute is sufficient to preempt Minnesota law and hereby respectfully requests reciprocity from the State of Minnesota in the same manner it offered other governing jurisdictions. The Solicitor General is hereby authorized and directed to implement this provision.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 1.

§ 2. Definitions.

In this title the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:

- (a) **Court** - means the Court of Central Jurisdiction for the Mille Lacs Band of Chippewa Indians.
- (b) **Manufacturer** - means every person engaged in the business of constructing or assembling vehicles of a type for which a certificate of title is required hereunder.
- (c) **Manufacturer's or Importer's Certificate of Origin** - means a certificate over the authorized signature of the manufacturer or importer of a vehicle, describing and identifying the vehicle, giving the name and address of the person to whom the vehicle is first sold by the manufacturer or importer, and containing assignments, duly executed, assigning the same to an applicant for a certificate of title on the vehicle in the Non-Removable Mille Lacs Band of Chippewa Indians.
- (d) **Mille Lacs Band** - means the Non-Removable Mille Lacs Band of Chippewa Indians.
- (e) **Mille Lacs Reservation** - means all lands under the jurisdiction of the Mille Lacs Band of Chippewa Indians.
- (f) **Mobile Home** - means a vehicle designed to be towed as a single unit or in sections upon the highway by a motor vehicle and equipped and used or intended to be used, primarily for human habitation, with walls of rigid uncollapsible construction.
- (g) **Owner** - means a person, other than a secured party, having the property in or title to a vehicle. This term includes a person entitled to the use and possession of a vehicle

subject to a security interest in another person, but excludes a lessee under a lease not intended as security. An Owner also means any person, firm, association, or corporation owning or renting a motor vehicle, or having the exclusive use thereof, under a lease or otherwise, for a period of greater than 30 days.

- (h) **Secretary** - means the Secretary of Treasury of the Mille Lacs Band of Chippewa Indians.
- (i) **Secured Party** - means a lender, seller or other person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party having an interest in the vehicle.
- (j) **Vehicle** - means every device in, upon or by which any person or property is or may be transported or drawn upon a highway.
- (k) For the purposes of effectuating the terms of this title, any terms not defined herein shall have the meanings given to them in the statutes of the State of Minnesota, except when the context otherwise requires.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 2.

§ 3. Reservation of Right.

The Band Assembly hereby fully reserves the right to alter, amend, or increase or decrease taxes imposed herein, or repeal the several provisions of this title, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 41.

§ 4. Administrative Expenses.

In no event shall the expenses of administration of the provisions of this title exceed thirty-five percent of the gross receipts of the taxes imposed herein.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 38.02.

§ 5. Revenue Distribution.

All revenue derived from fees imposed by this title shall be deposited in a trust fund account in the name of Non-Removable Mille Lacs Band of Chippewa Indians-Motor Vehicle Revenue Account, which is herewith created and shall not be distributed except upon the adoption of special Revenue Resolution of the Band Assembly so directing disbursement.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 42.

§ 6. American Association of Motor Vehicle Administrators: Policy Positions.

The Band Assembly hereby declares that the implementation of the provisions of this title shall be accomplished, as much as feasible, according to the policies promulgated by the American Association of Motor Vehicle Administrators, which are hereby incorporated by reference into this title.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 45.

§ 7. Powers and Duties of Secretary.

The Secretary of Treasury shall enforce all provisions of this title. He may prescribe all rules and regulations consistent with the provisions of this title through the issuance of Secretarial Orders. He may call upon the Solicitor General or any Band law enforcement officer to aid him in the performance of his duties. He may appoint such employees of the Non-Removable Mille Lacs Band of Chippewa Indians as may be required to administer the provisions of this title.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 38.01.

§ 8. Cancellation of Title or Registration.

The Secretary shall cancel a title or registration whenever:

- (a) A transfer of title is set aside by the Court by order or judgment, or
- (b) It is subsequently discovered that the issuance or possession of a title or registration is prohibited by law.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 34.

§ 9. Deputy Registrar of Motor Vehicles.

- (a) The position of Deputy Registrar of Motor Vehicles shall be a regular, full-time Legislative employment position funded with Band Revenue. The Secretary-Treasurer shall hire and supervise the Deputy Registrar of Motor Vehicles after posting the position in accordance with the Band's normal hiring policy. Except as otherwise provided in 19 MLBS § 10, the Band's Personnel Policy and Procedures Manual adopted in accordance with 6 MLBS § 1 shall be applicable to the Deputy Registrar of Motor Vehicles.
- (b) The Deputy Registrar of Motor Vehicles shall collect fees of \$5.00 per vehicle registration and \$5.00 per issuance of certificate of title. These fees shall be in addition to the fees imposed by 19 MLBS § 109.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 46.
Band Ordinance 34-12, § 1.

§ 10. Removal of Deputy Registrar of Motor Vehicles.

Any Deputy Registrar who shall act in a manner not consistent with the exercise of authority conferred in this title or pursuant to Secretarial Order may be suspended from further duty, for just cause, by the Secretary/Treasurer. Removal of the Deputy Registrar from office shall be initiated by the Secretary/Treasurer, subject to formal hearing and review by the Band Assembly, after provisions of due process rights. Under no circumstances shall any suspension exceed two weeks without hearing in the Band Assembly. The Secretary/Treasurer is authorized to temporarily appoint another Deputy Registrar in the event of inability or disability of the Deputy Registrar to perform the duties herein.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 47.

Cross References

Due process, *see* 1 MLBS § 8.

§ 11. Court of Central Jurisdiction.

The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from this title. Nothing in this title shall be construed as a waiver of sovereign immunity of the Non-Removable Mille Lacs Band of Chippewa Indians in any state or federal court of competent jurisdiction. Associate Justices of the Court of Central Jurisdiction shall have original jurisdiction over all causes of action which arises from any provisions of this title. A Criminal Division is hereby created in the Court of Central Jurisdiction to hear causes of actions arising from this title. The Court of Central Jurisdiction is additionally authorized to adjudicate unwritten cultural law causes of action pursuant to rules and regulations promulgated by Court order.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 38.

Cross References

Subject matter jurisdiction, court of central Jurisdiction, *see* 5 MLBS § 111.

§ 12. Limited Waiver of Sovereign Immunity.

The Band Assembly hereby waives sovereign immunity to be sued only in the Court of Central Jurisdiction in any seizure of property matter pursuant to provisions of this title. However, any such action shall only be directed against the Secretary of Treasury, in his/her official capacity in order to challenge any seizure action. Any and all seizure causes of action which arise pursuant to this title shall be limited to actions against the Secretary of Treasury in his/her official capacity for an order returning any seized goods. All other causes of action which arise pursuant to this title shall be limited in relief to declaratory or injunctive measures and no damages, monetary or otherwise, including but not limited to attorney fees shall be permitted.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 40.

Cross References

Seizure and confiscation of certain substances and vehicles containing them, *see* 19 MLBS § 503.
Unregistered or improperly registered vehicles, seizure and impoundment, *see* 19 MLBS § 105.

§ 13. Solicitor General Obligations.

The Solicitor General shall represent the interests of the Non-Removable Mille Lacs Band of Chippewa Indians and the Secretary of Treasury in any matter arising from any provisions of this title before the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 43.

§ 14. State and Territorial Motor Vehicle Statutes and Judicial Proceedings; Full Faith and Credit.

- (a) The Acts of the Legislature of any state, territory or possession of the United States or any federally recognized Indian Tribe, relating to any matter of motor vehicle titling or registration or the operation of motor vehicles on any public highway, road or street or copies thereof, shall be authenticated by affixing the seal of such state, territory or possession of the United States or any federally recognized Indian Tribe thereto
- (b) The Motor Vehicle records and any judicial motor vehicle proceedings of any court of any such state, territory or possession of the US or any recognized Indian Tribe, or copies thereof, shall be proved or admitted in the Court of Central Jurisdiction by the attestation of the Clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
- (c) Such Acts, records and judicial proceedings or copies thereof, so authenticated shall have the same full faith and credit in the Court of Central Jurisdiction as they have by law or usage in the courts of such state, territory or possession of the United States or any federally recognized Indian Tribe from which they are taken provided that any such state, territory or possession of the United States or any federally recognized Indian Tribe has executed a motor vehicle reciprocity agreement with the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 50.

§ 15 State and Territorial Non-Judicial Motor Vehicle Records; Full Faith and Credit.

- (a) All non-judicial motor vehicle records or books kept in any public office of any state, territory or possession of the United States or any federally recognized Indian Tribe, or copies thereof, shall be proved or admitted in the Court of Central Jurisdiction or any office of the Non-Removable Mille Lacs Band of Chippewa Indians by the attestation of the custodian of such records or books and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, any duly appointed officer of the Governor or Secretary of State, the chancellor or keeper of the great seal of the state, territory or possession of the United States or any

federally recognized Indian Tribe that the said attestation is in due form and by the proper offices.

- (b) If the certificate is given by a judge, it shall be further authenticated by the Clerk of Court, who shall certify, under his/her hand and the seal of his/her office that such judge is duly commissioned and qualified; or, if given by the Governor, executive appointee, secretary, chancellor or keeper of the great seal, it shall be under the great seal of the state, territory or possession of the United States or any federally recognized Indian Tribe in which it is made.
- (c) Such records or books or copies thereof, so authenticated shall have the same full faith and credit in the Court of Central Jurisdiction and every public office of the Non-Removable Mille Lacs Band of Chippewa Indians, as they have by law or usage in the courts or offices of the state, territory or possession of the United States or any federally recognized Indian Tribe from which they are taken provided that any such state, territory or possession of the United States or any federally recognized Indian Tribe has executed a motor vehicle reciprocity agreement with the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 51.

§ 16. Motor Vehicle Registration Forms.

The Deputy Registrar is hereby authorized and empowered to utilize any form presently in use by the Minnesota Department of Public Safety for any matter related to fulfilling the mandates of this Band Statute as an official form of the Mille Lacs Band of Chippewa Indians. Any such form so utilized, shall be modified by the Deputy Registrar wherever necessary to comply with applicable provisions of this title. All such forms bearing the name of the Minnesota Department of Public Safety or the logo of the said Department shall be treated as the official form of the Mille Lacs Band of Chippewa Indians for the purpose so designated in the title of the form.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 49.

§ 17. Applicability of 24 MLBS §3301 et seq., Remedies for Creditors, and 18 MLBS §301, Uniform Commercial Code.

The provisions of 24 MLBS § 3301, Remedies for Creditors, and 18 MLBS § 301, Uniform Commercial Code of the State of Minnesota, are hereby declared as mandatory provisions of Band law available to lien holders for the recovery of a vehicle when the owner of record is in

default of any security agreement entered into with a member of the Non-Removable Mille Lacs Band of Chippewa Indians who resides on land subject to the jurisdiction of the Band. Provisions for due process in the Court of Central Jurisdiction pursuant to 24 MLBS § 3301 are mandatory prior to any repossession action by any lien holder.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 44.

Cross References

Security interests, certificates of title, see 19 MLBS § 271.

CHAPTER 2

REGISTRATION

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	101
2. Registration Plates	141

SUBCHAPTER 1

GENERAL PROVISIONS

Section

101. Operating Unregistered or Improperly Registered Vehicle.

102. When Vehicles Exempt from Registration.

103. Exemption of Nonresidents.

104. Penalties.

105. Seizure and Impoundment of Vehicles.

106. Application for Registration.

107. Grounds for Refusing Registration.

108. Contents, Issuance and Display of Certificates of Registration; Issuance of Duplicate Certificate.

109. Annual Registration Fees.

110. When Fees Refundable.

111. When Registration to be Suspended.

§ 101. Operating Unregistered or Improperly Registered Vehicle.

- (a) It is unlawful for any person to operate or for an owner to consent to being operated on any roads of the Mille Lacs Reservation or roads subject to the jurisdiction of the Band, any motor vehicle, trailer or semitrailer or any other vehicle for which a registration fee is specifically prescribed unless at the time of operation the vehicle in question either is registered with the Mille Lacs Reservation or is exempt from registration.
- (b) A vehicle may be operated by a private person after the date of purchase of such vehicle by such private person, or after the date such person moved to this Reservation or lands subject to the jurisdiction of the Band, once the person has obtained a temporary 21 days registration certificate from the Secretary. All temporary certificates shall be affixed to the interior rear window of the vehicle, on the driver's side of the car and in a position so as not to obstruct the rear-view of any driver. The Secretary shall issue no other temporary registration certificate upon the expiration of the first 21 days permit.
- (c) All vehicles subject to renewal of registration may be operated provided that application for reregistration has been made.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 3.

§ 102. When Vehicles Exempt from Registration.

A vehicle even though operated upon roads of this Reservation is exempt from registration when such vehicle:

- (a) Is operated in accordance with the provisions exempting nonresident or foreign-registered vehicles from registration; or
- (b) Is an implement of husbandry used exclusively in or incidental to agricultural operations; or
- (c) Is a trailer or semitrailer permanently equipped with a well-drilling outfit and used exclusively for such purposes; or
- (d) Is a forklift truck, a specially constructed road or truck tractor used for shunting trailers or semitrailers in terminal areas.
- (e) Is a trailer or semitrailer not operated in conjunction with a motor vehicle; or
- (f) Is a motor vehicle being towed; or

- (g) Is a piece of road machinery; or
- (h) Is a motor truck which is operated upon a highway only when directly crossing such highway; or
- (i) Is a motor vehicle last registered in another jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 4.

§ 103. Exemption of Nonresidents.

- (a) Any vehicle which is registered in another jurisdiction is exempt from the laws of the Non-Removable Mille Lacs Band of Chippewa Indians providing for the registration of such vehicles if:
 - (1) The vehicle carried a registration plate indicating the registration in such other jurisdiction;
 - (2) The vehicle is owned by a nonresident of the Mille Lacs Reservation; and
 - (3) The jurisdiction in which the vehicle is registered allows such vehicles when registered in the Mille Lacs Reservation to be operated tax free upon its roads under conditions substantially as favorable to residents of the Mille Lacs Band as to its own residents.
- (b) If the owner of any such vehicle moves to the Mille Lacs Reservation or if the vehicle is purchased by a resident of the Mille Lacs Reservation the vehicle immediately becomes subject to the laws of the Mille Lacs Reservation providing for the registration of vehicles.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 13.

§ 104. Penalties.

Any person violating 19 MLBS § 101(a) may be fined not more than \$50.00 or imprisoned not more than 30 days, or both. In addition to imposing the penalty, the Court shall order the offender to make application for registration or reregistration and to pay the fee thereof.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 3.03.

§ 105. Seizure and Impoundment of Vehicles.

If upon order of the Court of Central Jurisdiction to register or reregister a vehicle, the owner fails to comply, the Court shall have the power to order any Law Enforcement Officer of the Band to seize and impound any unregistered or unlawfully registered vehicle and to hold the same until such time as the owner complies with the provisions of this title. All costs incurred in the holding, under seizure by order of the Court shall be the responsibility of the owner of the vehicle. Any vehicle held, under seizure order of the Court, shall be sold at public auction to the highest bidder, including all costs incurred, after thirty (30) days from the date of seizure. The owner of the vehicle shall have the right to petition the Court to halt any public auction of the said vehicle at any time prior to the sale. The Secretary shall have the right to reject any and all bids received which are less than the appraised value of the vehicle. All proceeds derived from the sale of the vehicle, less all costs incurred by the Band, including Court fines and costs, shall become the property of the legal owner as defined in 19 MLBS § 2(g). If, in the event the sale does not realize sufficient proceeds to pay off any security interest, the owner prior to auction shall be obligated to the secured party for any balance remaining. The secured party shall have the right to be listed as a secured party on any other certificate of title for a vehicle registered in the Band and owned by the person prior to the auction. Nothing herein shall limit the rights of any secured party in any vehicle registered within the Mille Lacs Band.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 3.04.

Cross References

Actions challenging seizure of property, *see* 19 MLBS § 13.

§ 106. Application for Registration.

- (a) Application for original registration and for renewal of registration shall be made to the Secretary of Treasury of the Mille Lacs Band of Chippewa Indians upon forms prescribed by him and shall be accompanied by the required fee.
- (b) Applications for original registration of a vehicle shall contain the following information:
 - (1) The name of the owner.
 - (2) The address of the owner.

- (3) A description of the vehicle, including make, model, identifying number and any other information which the Mille Lacs Band may reasonably require for proper identification of the vehicle.
 - (4) The District in which the vehicle is kept.
 - (5) Such further information as the Secretary may reasonably require to enable him to determine whether the vehicle is by law entitled to registration or to enable him to determine the proper registration fee for the vehicle.
 - (6) Proof of liability insurance. The Deputy Registrar shall conduct periodic insurance checks on any vehicles registered under the jurisdiction of the Band. Any said check shall be random in nature and occur 60 days after issuance of license plates.
- (c) Applications for removal of registration shall contain the information required in subsection (b) for applications or such parts thereof as the Secretary deems necessary to assure the proper registration of the vehicle.
 - (d) If the applicant for a certificate of registration is under 18 years of age, the application shall be accompanied by a statement made and signed by the person or guardian having custody of the applicant, stating that the applicant has the consent of such person or guardian to register such vehicle in the applicant's name. The signature on such statement shall not impute any liability for the negligence or misconduct of the applicant while operating such motor vehicle on the highways. Any person who violates this subsection may be fined not more than \$50.00 or imprisoned not more than 30 days, or both.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 5.

Cross References

Designation of districts, *see* 2 MLBS § 11.

License plates for handicapped persons, *see* 19 MLBS § 602.

§ 107. Grounds for Refusing Registration.

The Secretary shall refuse registration of a vehicle under the following circumstances:

- (a) No registration shall be issued unless the applicant is residing within the boundaries of the Mille Lacs Reservation; or
- (b) The required fee has not been paid; or

- (c) The applicant has failed to furnish the information or documents required by the Mille Lacs Band pursuant to this title; or
- (d) A certificate of title is a prerequisite to registration of the vehicle and applicant does not hold a valid certificate of title and is not entitled to the issuance of a certificate of title; or
- (e) The applicant has had his registration suspended or revoked in accordance with 19 MLBS § 111 and such suspension or revocation still is in effect.
- (f) Proof of liability insurance.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 6.

Cross References

Certificates of title, prerequisite to registration, *see* 19 MLBS § 202.

§ 108. Contents, Issuance and Display of Certificates of Registration; Issuance of Duplicate Certificate.

- (a) The Secretary upon registering a vehicle shall issue and deliver to the owner a certificate of registration. The certificate shall contain the name and address of the owner, a brief description of the vehicle, the registration number assigned and the date of expiration of registration. The certificate shall be in such form and may contain such additional information as the Secretary deems advisable.
- (b) The Secretary shall issue a duplicate certificate of registration upon application thereof by any person in whose name the vehicle is registered and upon payment of a fee of \$2.50.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 7.

§ 109. Annual Registration Fees.

- (a) A registration fee as herein set forth shall be paid for all motor vehicles, not exempted by 10 MLBS § 102, using the public streets or roads of the Mille Lacs Reservation for each calendar year on the following basis:
 - (1) During the first three years of vehicle life \$50.00 per calendar year.

- (2) During the fourth through seventh years of vehicle life \$25.00 per calendar year.
 - (3) During the eighth and succeeding years of vehicle life \$20.00 per calendar year.
 - (4) A registration fee of \$10.00 shall be paid for all motorcycles using the public streets and roads of the Mille Lacs Reservation for each calendar year.
 - (5) A registration fee of \$10.00 biennium shall be paid for two wheel utility trailers. Any other recreational trailer (s) shall be registered at a fee of \$20.00 biennium.
- (b) Pro-rated fee - When a motor vehicle first becomes subject to registration during the calendar year, the registration fee shall be for the remainder of the year prorated on a monthly basis, one-twelfth of the annual registration fee for each calendar month or fraction thereof.

Historical and Statutory Notes

Source:

Band Statute 1 097-MLC-52, § 11.

§ 110. When Fees Refundable.

- (a) The Mille Lacs Band shall not refund a fee paid to it except when expressly authorized or directed by this section.
- (b) The Mille Lacs Band shall refund the unused portion of the registration fee paid for the registration of a vehicle upon application for such refund upon a form prescribed by the Mille Lacs Band and upon furnishing of such proof as the Secretary may require that the vehicle will not be operated in the Mille Lacs Reservation during the remainder of the period for which the vehicle is registered, and returns to the Mille Lacs Band his certificate of registration and registration plates. The refund shall be computed on a monthly basis, one-twelfth of the annual registration fee for each calendar month or fraction thereof, during which the motor vehicle will not be used on any road of the Mille Lacs Reservation.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 12.

§ 111. When Registration to be Suspended.

- (a) Any Justice of the Court of Central Jurisdiction for the Mille Lacs Band of Chippewa Indians shall suspend the registration when:
 - (1) The registration was completed through fraud or error and the person who registered the vehicle does not or cannot register the vehicle properly; or
 - (2) The required fee has not been paid and the same is not paid upon reasonable notice and demand.
- (b) Any registration suspended pursuant to this section continues to be suspended until reinstated by the Court. The Court shall reinstate the registration when the reason for the suspension has been removed.
- (c) Whenever the registration of a vehicle is suspended under this section, the owner or person in possession of the registration plates shall forthwith return them to the Mille Lacs Band. Any person who fails to return the plates as required by this section may be required to forfeit not more than \$50.00.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 17.

SUBCHAPTER 2

REGISTRATION PLATES

Section

- 141. Issuance and Delivery of Registration Plates.**
- 142. Design of Registration Plates.**
- 143. Display of Registration Plates.**
- 144. Issuance of Duplicate Plates.**
- 145. List of Registration Plates Issued.**

Cross References

License plates for handicapped persons, *see* 19 MLBS § 602.

§ 141 Issuance and Delivery of Registration Plates.

The Secretary upon registering a vehicle pursuant to this title shall issue and deliver prepaid to the applicant two registration plates for each automobile, motor truck, motor bus, school bus or

self-propelled mobile home registered, and one plate for other vehicles registered unless the Secretary believes that two plates will better serve the interests of law enforcement.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 8.

§ 142. Design of Registration Plates.

- (a) The Band Assembly shall determine the size, color, and design of registration plates with a view toward making them visible evidence of the period for which the vehicle is registered, as well as making them a ready means of identifying the specific vehicle or owner for which the plates were issued.
- (b) All registration plates shall have displayed upon them the following:
 - (1) The registration number of letters assigned to the vehicle or owner.
 - (2) The name "Mille Lacs Band of Chippewa Indians" or an abbreviation thereof.
 - (3) An indication of the period for which the specific plate is issued or the date of expiration of registration.
 - (4) All registration plates issued shall be treated with a reflectorized material.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §§ 8.01, 8.02.

§ 143. Display of Registration Plates.

- (a) When two registration plates are issued for a vehicle, one such plates shall be attached to the front and one to the rear of the vehicle. Whenever only one registration plate is issued, it shall be attached to the rear.
- (b) Registration plates shall be attached firmly and rigidly in a horizontal position and in a conspicuous place. The plates shall at all times be maintained in a legible condition and shall be so displayed that they can be readily and distinctly seen and read. Any peace officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this section.
- (c) Any of the following may be required to forfeit not more than \$50.00:

- (1) A person who operates a vehicle for which current registration plate or insert tag have been issued without such plate or tag being attached to the vehicle;
- (2) A person who operates a vehicle with a registration plate attached in a non-rigid or non-horizontal manner or in an inconspicuous place so as to make it difficult to see and read the plate;
- (3) A person who operates a vehicle with a registration plate in an illegible condition due to the accumulation of dirt or other foreign matter.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 9.

§ 144. Issuance of Duplicate Plates.

- (a) Whenever a current registration plate is lost or destroyed, the owner of the vehicle to which the plate was attached shall immediately apply to the Secretary for replacement. Upon satisfactory proof of the loss or destruction of the plate and upon payment of a fee of \$5.00 and the cost of replacement, the Secretary shall issue a replacement.
- (b) Whenever a current registration plate becomes illegible, the owner of the vehicle to which the plate is attached shall apply to the Secretary for a replacement. Upon receipt of satisfactory proof of illegibility, and upon payment of all costs and a fee of \$5.00, the Secretary shall issue a replacement. Upon receipt of his replacement plate, the applicant shall forthwith surrender to the Secretary his illegible plate.
- (c) When issuing a replacement plate, the Secretary may assign a new number and issue a new plate rather than a duplicate of the original if in his judgment that is in the best interest of economy or prevention of fraud. In such event, the person receiving the replacement plates shall surrender both original plates, if two plates were issued.
- (d) Any person issued replacement plates who fails to surrender his illegible plates as required by subsection (c) may be required to forfeit not more than \$50.00.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 10.

§ 145. List of Registration Plates Issued.

The Secretary shall keep an accurate and updated list of every registration plate issued, the number thereof, the name of the owner and the description of the motor vehicle.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 10.04.

CHAPTER 3

CERTIFICATES OF TITLE

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	201
2. Transfer of Title	241
3. Security Interests	271

SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 201. When Certificate of Title Required.**
- 202. Prerequisite to Registration.**
- 203. Application for Certificate of Title.**
- 204. New Vehicles; Certificate of Origin.**
- 205. Maintenance of Records.**
- 206. Contents of Certificate of Title.**
- 207. Grounds for Refusing Issuance of Certificate of Title.**
- 208. Lost, Stolen or Mutilated Certificates.**
- 209. Fees.**
- 210. Suspension or Revocation of Certificate.**

§ 201 When Certificate of Title Required.

The owner of a vehicle subject to registration on the Mille Lacs Reservation whether or not such vehicle is operated on any roads of the Reservation, shall make application for certificate of title for the vehicle under the following circumstances:

- (a) If he has newly acquired the vehicle.

- (b) If he applies for registration of a vehicle for which he does not hold a valid certificate of title previously issued to him by the Secretary for the vehicle in question, he shall at the same time apply for a certificate of title.
- (c) A vehicle which is presently in possession.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 18.

§ 202. Prerequisite to Registration.

An applicant's eligibility for a certificate of title is a prerequisite to registration of the vehicle. If the applicant for registration holds a valid certificate of title previously issued to him by the Secretary for the vehicle in question, that is prima facie evidence that he is the record owner of the vehicle and he need not apply for a new certificate of title each time he applies for registration.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 18.01

Cross References

Grounds for refusing registration, *see* 19 MLBS § 107.

§ 203. Application for Certificate of Title.

An application for a certificate of title shall be made to the Secretary upon a form prescribed by him and shall be accompanied by the required fee. Each application for certificate of title shall contain the following information:

- (a) The name and address of the owner.
- (b) A description of the vehicle, including make, model, identifying number and any other information which the Secretary may reasonably require for proper identification of the vehicle.
- (c) The date of purchase by the applicant, the name, and address of the person from whom the vehicle was acquired and the names and addresses of any secured parties in the order of their priority and the dates of their security agreements.
- (d) If the vehicle is a new vehicle being registered for the first time, the signature of the dealer authorized to sell such new vehicle.

- (e) Any further evidence of ownership, which may reasonable be required by the Secretary to enable him to determine whether the owner is entitled to a certificate of title and the existence or non-existence of security interests in the vehicle.
- (f) If the vehicle is a used motor vehicle which was last previously registered in another jurisdiction, the applicant shall furnish any certificate of ownership issued by the other jurisdiction and a statement pertaining to the title history and ownership of such motor vehicle, such statement to be in the form the Secretary prescribes, and shall furnish a certification by a law enforcement officer, or by an employee designated by the Secretary to the effect that the physical description of the motor vehicle has been checked and conforms to the description given in the application.
- (g) Each applicant for a certificate of title shall surrender to the Secretary or his designee, any and all other certificates of title issued by any other governmental agency of any state which is held by the applicant or any other person or entity as a prerequisite to receiving a certificate of title from the Non-Removable Mille Lacs Band of Chippewa Indians.
- (h) The vehicle odometer reading with the owner's certification of the accuracy and that to the best of his/her knowledge neither he/she or any other person has altered the odometer.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 19.

Cross References

Fraudulent application for certificate of title, *see* 19 MLBS §§ 301, 302.

Tampering with odometer reading, *see* 19 MLBS § 303.

§ 204. New Vehicles; Certificate of Origin.

It is hereby specifically required that the automobile manufacturer's certificate of origin be surrendered to the Secretary or his designee prior to any lawful registration and titling of any new vehicle.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 19.01.

§ 205. Maintenance of Records.

The Secretary shall maintain a record of all applications and all certificates of title issued by him:

- (a) According to title number.
- (b) Alphabetically, according to name of owner.
- (c) In any other manner which the Secretary determines to be desirable.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 20.

§ 206. Contents of Certificate of Title.

- (a) Each certificate of title issued by the Secretary shall contain:
 - (1) The name and address of the owner.
 - (2) The names of any secured parties in the order of priority as shown on the application, or if the application is based on another certificate of title, as shown on such certificate.
 - (3) The title number assigned to the vehicle.
 - (4) A description of the vehicle, including make, model and identifying number.
 - (5) Vehicle odometer reading and a certification of accuracy of the reading when the vehicle is first registered and every time the ownership is transferred thereafter.
 - (6) Any other data which the Secretary deems pertinent and desirable.
- (b) The certificate of title shall contain forms for assignment and warranty of title by the owner, and for assignment and warranty of title by a dealer, and may contain forms for application for a certificate of title by a transferee and for the naming of a secured party and the assignment or release of a security interest.
- (c) A certificate of title issued by the Secretary is prima facie evidence of the facts appearing on it.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 21.

Cross References

Tampering with odometer, *see* 19 MLBS § 303.

§ 207. Grounds for Refusing Issuance of Certificate of Title.

The Secretary shall refuse issuance of a certificate of title if any required fee is not paid or if he has reasonable grounds to believe that:

- (a) The person alleged to be the owner of the vehicle is not the owner; or
- (b) The application contains false or fraudulent statement; or
- (c) The applicant fails to furnish the information or documents required by this Statute.
- (d) The vehicle odometer reading is inaccurate or the vehicle odometer has been altered in any manner so as to unlawfully alter the value of the vehicle.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §22.

Cross References

Fraudulent application for certificate of title, *see* 19 MLBS §§ 301, 302.

Tampering with odometer reading, *see* 19 MLBS § 303.

§ 208. Lost, Stolen or Mutilated Certificates.

If a certificate of title is lost, stolen, mutilated or destroyed or becomes illegible, the owner or legal representative of the owner named in the certificate, as shown by the records of the Secretary shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the Secretary. The duplicate certificate of title shall contain the legend "This is a duplicate certificate and may be subject to the rights of a person under the original certificate".

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 23.

§ 209. Fees.

The Secretary shall be paid the following fees:

- (a) For filing an application for the first certificate of title \$5.00 by the owner of the vehicle.

- (b) For the original notation and subsequent release of each security interest noted upon a certificate of title, a single fee of \$5.00 by the owner of the vehicle.
- (c) For a duplicate certificate of title \$10.00 by the owner of the vehicle.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 24.

§ 210. Suspension or Revocation of Certificate.

- (a) The Secretary shall suspend or revoke a certificate of title if he finds:
 - (1) The certificate of title was fraudulently procured, erroneously issued, or prohibited by law; or
 - (2) The vehicle has been scrapped, dismantled or destroyed; or
 - (3) A transfer of title is set aside by a court by order or judgment.
- (b) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.
- (c) When the Secretary suspends or revokes a certificate of title, the owner or person in possession of it shall, immediately upon receiving notice of the suspension or revocation, mail or deliver the certificate to the Secretary.
- (d) The Secretary may seize and impound any certificate of title which has been suspended or revoked.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 33.

Cross References

Fraudulent application for certificate of title, *see* 19 MLBS §§ 301, 302.

SUBCHAPTER 2

TRANSFER OF TITLE

Section

- 241. Transfer of Interest in Vehicle.
- 242. Death of Owner.
- 243. When Secretary to Issue New Certificate.
- 244. Penalties.

§ 241. Transfer of Interest in Vehicle.

- (a) If an owner transfers his interest in a vehicle other than by the creation of a security interest, he shall at the time of the delivery of the vehicle execute an assignment and warranty of title to the transferee in the space provided therefore on the certificate. With respect to motor vehicles that are not twenty-six (26) years of age or older, the transferor shall also, in the space provided therefore on the certificate state the true cumulative mileage registered on the odometer or that the actual mileage is unknown if the odometer reading is known by the transferor to be different from the true mileage. The transferor shall cause the certificate and assignment to be mailed or delivered to the transferee or the Band's Secretary of Treasury.
- (b) The transferee shall, promptly after delivery to him of the vehicle, execute the application for a new certificate of title in the space provided therefore on the certificate and cause the certificate and application to be mailed or delivered to the Secretary.
- (c) A transfer by an owner is not effective until the provisions of this section have been complied with. An owner who has delivered possession of the vehicle to the transferee and has complied with the provisions of this section requiring action by him is not liable as owner for any damages thereafter resulting from operation of the vehicle.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 25.

Cross References

Fraudulent practices involving registration and titling of motor vehicle, *see* 19 MLBS § 302.

§ 242. Death of Owner.

When any person dies testate or intestate and said person is the legal owner of a vehicle registered under the laws of the Non-Removable Mille Lacs Band of Chippewa Indians, the Secretary shall issue a new certificate of title only upon receipt of an order from the Court of Central Jurisdiction so directing any said issuance, provided that the new legal owner is a person eligible to have said vehicle registered under the laws of this Band.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 25.05.

§ 243. When Secretary to Issue New Certificate.

The Secretary upon receipt of a properly assigned certificate of title, with an application for a new certificate of title, the required fee and any other transfer documents required by statute, to support the transfer, shall issue a new certificate of title in the name of the transferee as owner.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 26.

§ 244. Penalties.

- (a) An owner of a vehicle for which a certificate of title has been issued, who upon transfer of the vehicle fails to execute and deliver the assignment and warranty of title required by 19 MLBS § 241(a) may be required to forfeit not more than \$50.00.
- (b) Any transferee of a vehicle who fails to make application for a new certificate of title immediately upon transfer to him of a vehicle may be required to forfeit not more than \$50.00. A certificate is considered to have been applied for when the application accompanied by the required fee has been delivered to the Secretary or deposited in the mail properly addressed with postage required.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §§ 25.03, 25.04.

SUBCHAPTER 3

SECURITY INTERESTS

Section

- 271. Perfection of Security Interests.**
- 272. Duties on Creation of Security Interest.**
- 273. Assignment of Security Interest.**
- 274. Release of Security Interest.**
- 275. Secured Party's Duties.**
- 276. Owner's Duties.**
- 277. Methods of Perfecting Exclusive.**

§ 271. Perfection of Security Interests.

- (a) A security interest in a vehicle of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or secured parties of the vehicle unless perfected as provided in this title.
- (b) A security interest in perfected by the delivery to the Secretary of the existing certificate of title, if any, an application for a certificate of title containing the name and address of the secured party and the date of his security agreement, the required fee. It is perfected as of the time of its creation if such delivery is completed within 10 days thereafter.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 27.

Cross References

Applicability of statutes relating to remedies of creditors and Uniform Commercial Code, *see* 19 MLBS § 18.

§ 272. Duties on Creation of Security Interest.

If an owner creates a security interest in a vehicle:

- (a) The owner shall immediately execute, in the space provided therefore on the certificate of title or on a separate form prescribed by the Secretary an application to name the secured party on the certificate, showing the name and address of the secured party and the date of his security agreement, and cause the certificate, application and the required fee to be delivered to the secured party.

- (b) The secured party shall immediately cause the certificate, application and the required fee to be mailed or delivered to the Secretary.
- (c) Upon receipt of the certificate of title, application and the required fee, the Secretary shall issue to the secured party a new certificate which contains the name and address of the lien-holder.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 28.

§ 273. Assignment of Security Interest.

- (a) A secured party may assign, absolutely or otherwise, his security interest in the vehicle to a person other than the owner without affecting the interest of the owner of the validity of the security interest, but any person without notice of the assignment is protected in dealing with the secured party as the holder of the security interest and the secured party remains liable for any obligations as a secured party until the assignee is named as secured party on the certificate.
- (b) The assignee may not need to perfect the assignment, have the certificate of title endorsed or issue with the assignee named as secured party, upon delivering to the Secretary the certificate and an assignment by the secured party named in the certificate in the form the Secretary prescribes.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 29.

§ 274. Release of Security Interest.

- (a) Whenever there is no outstanding obligation and no commitment to make advances, incur obligations or otherwise give value, secured by the security interest in a vehicle under any security agreement between the owner and the secured party, the secured party shall execute and deliver to the owner, as the Secretary prescribes, a release of the security interest in the form and manner prescribed by the Secretary. If the secured party fails to execute and deliver such a release within 10 days after receipt of the owner's written demand therefore he shall be liable to the owner for \$25.00 and for any loss caused to the owner by such failure.
- (b) The owner, other than a dealer holding the vehicle for resale, shall promptly cause the certificate and release to be mailed or delivered to the Secretary, which shall release the secured party's rights on the certificate and issue a new certificate.

Historical and Statutory Notes

Source:

Band Statute 1097-ML-52, § 30.

§ 275. Secured Party's Duties.

- (a) A secured party named in a certificate of title shall, upon written request of the owner or of another secured party named on the certificate, disclose any pertinent information as to his security agreement and the indebtedness secured by it.
- (b) Any secured party who fails to disclose information pursuant to subsection (a) shall be liable for any loss caused to owner thereby.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 31.

§ 276. Owner's Duties.

- (a) An owner shall promptly deliver his certificate of title to any secured party who is named on it or who has a security interest in the vehicle described in it upon receipt of a notice from such secured party that his security interest is to be assigned, extended or perfected.
- (b) Any owner who fails to deliver the certificate of title to a secured party requesting it pursuant to subsection (a) shall be liable to such secured party for any loss caused to the secured party thereby and may be required to forfeit not more than \$25.00.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §§ 31.01, 31.03.

§ 277. Methods of Perfecting Exclusive.

The method provided in this title of perfecting and giving notice of security interests subject to this title is exclusive.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 32.

CHAPTER 4

FRAUDULENT PRACTICES

Section

- 301. Fraudulent Application for Certificate of Title.**
- 302. Fraudulent Practices Involving Registration and Titling of Motor Vehicle.**
- 303. Tampering with Odometer Reading.**
- 304. Improper use of Evidence of Registration.**
- 305. False Evidence of Registration.**

Cross References

Fraud, *see* 24 MLBS § 1154.

§ 301. Fraudulent Application for Certificate of Title.

A person who with fraudulent intent uses a false or fictitious name or address, or makes a material false statement, or fails to disclose a security interest, or conceals any other material fact) in an application for a certificate of title or submits a false, forged, or fictitious document in support of an application for a certificate of title, shall be guilty of fraud and may be sentenced to a term of not more than 180 days incarceration, a five hundred dollar fine or exclusion from the Band for not more than 180 days, or all of the above.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 14.

Cross References

Application for certificate of title, *see* 19 MLBS § 203.
Grounds for refusing issuance of certificate of title, *see* 19 MLBS § 207.
Suspension or revocation of certificate of title, *see* 19 MLBS § 210.

§ 302. Fraudulent Practices Involving Registration and Titling of Motor Vehicle.

A person is in violation of the provisions of this title who with fraudulent intent permits another, not entitled thereto, to use or have possession of a certificate of title, who willfully fails to mail or deliver a certificate of title to the Secretary of Treasury within ten days after legal sale or transfer of interest; who commits fraud in any application for a certificate of title, who fails to notify the Secretary of Treasury or his designee of any fact required under the provisions of this title; or, who willfully violates any provisions of this Statute shall be guilty of fraudulent practices involving the registration and titling of a motor vehicle and upon conviction sentenced to up to 180 days incarceration and/or a fine of up to five hundred dollars.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 14.01.

Cross References

Application for certificate of title, *see* 19 MLBS § 203.

Grounds for refusing issuance of certificate of title, *see* 19 MLBS § 207.

Transfer of interest in vehicle, certificates of title, *see* 19 MLBS § 241.

§ 303. Tampering with Odometer Reading.

Any person who knowingly tampers with or alters a motor vehicle odometer reading, or causes another person to alter or tamper with a motor vehicle odometer reading, shall be guilty of fraud and may be sentenced to a term of not more than 180 days incarceration and a punitive fine not to exceed five hundred dollars. Any person so convicted pursuant to the provisions of this section is liable for all Court costs including compensatory damages that result from his/her unlawful acts payable to the injured party at the direction of the Court.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 14.02.

Cross References

Application for certificate of title, *see* 19 MLBS § 203.

Contents of certificate of title, *see* 19 MLBS § 206.

Grounds for refusing issuance of certificate of title, *see* 19 MLBS § 207.

Suspension or revocation of certificate of title, *see* 19 MLBS § 210.

§ 304. Improper Use of Evidence of Registration.

Any person who does any of the following may be fined not more than \$50.00 or imprisoned not more than 30 days, or both:

- (a) Lends to another a registration plate, knowing that the person borrowing the plate is not authorized by law to use it; or
- (b) Display upon a vehicle a registration plate not issued for such vehicle, or not otherwise authorized by law to be used thereon; or
- (c) Willfully twists, paints, alters or adds to, or cuts off any portion of a registration plate or sticker; or who places or deposits, or causes to be placed or deposited on such plate

or sticker any substance to hinder the normal reading of such plate; or who defaces, disfigures, changes or attempts to change any letter or figure thereon.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 15.

§ 305. False Evidence of Registration.

Whoever operates or has in his possession a motor vehicle, mobile home, trailer or semitrailer or other vehicle subject to registration which has attached thereto any plate or similar device fashioned in imitation of or altered so as to resemble the current registration plate issued by the Mille Lacs Band may be fined not more than \$50.00 or imprisoned not more than 30 days, or both.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 16.

CHAPTER 5

TRAFFIC VIOLATIONS

Section

- 401. Driver's License.**
- 402. Insurance.**
- 403. Careful and Prudent Driving; Speed.**
- 404. Reckless Driving.**
- 405. Driving Under Influence of Alcohol or Controlled Substance.**
- 406. Open Bottle Law.**
- 407. Parking in Restricted Area.**
- 408. Definitions.**
- 409. Signs, Signals Marking.**
- 410. Unauthorized Signs.**
- 411. Unlawful to Possess, Alter or Remove Signs.**
- 412. Accidents.**
- 413. Impeding Traffic.**
- 414. Emergency Vehicles.**
- 415. Right of Way.**
- 416. Operation of Bicycles.**
- 417. Stopping, Standing and Parking.**
- 418. Police May Move Cars.**
- 419. Good Samaritan.**
- 420. Obstructing View of Driver.**

- 421. Littering.
- 422. School Buses.
- 423. Hitching Behind Vehicles.
- 424. Vehicle Lighting.
- 425. Head Lamps.
- 426. Rear Lamps.
- 427. Vehicle Signals.
- 428. Brakes.
- 429. Horns.
- 430. Mufflers.
- 431. Rear View Mirrors.
- 432. Windshields.
- 433. Surface of Tires; Tires with Metal Studs.
- 434. Offenses et al.
- 435. Interpretation and Effect.
- 436. Uniform Traffic Ticket.
- 437. Fine.
- 438. Guilty Plea.

Historical and Statutory Notes

Band Statute 1097-MLC-52, § 35.11 provides: The following addition provisions of Minnesota Statutes Chapter 169 relating to the Highway Traffic Regulations shall be incorporated by reference as traffic regulations of the Mille Lacs Band of Chippewa Indians.

<u>Minnesota Statute</u>	<u>Title</u>	<u>Band Codification Section</u>
Chapter 169.01	Definitions	35.12
169.06	Signs, Signals Marking	35.13
169.07	Unauthorized Signs	35.14
169.08	Unlawful to Possess, Alter, Deface, or Remove Signs	35.15
169.09	Accidents	35.16
169.15	Impeding Traffic	35.17
169.17	Emergency Vehicles	35.18
169.20	Right of Way	35.19
169.222	Operation of Bicycles	35.20
169.32 and 169.34	Stopping, Standing, and Parking	35.21
169.33	Police May Move Cars	35.22
169.342	Good Samaritan	35.23
169.37	Obstructing View of Driver	35.24
169.42 and 169.421	Littering	35.25
169.44	School Buses	35.26
169.46	Hitching Behind Vehicle	35.27
169.48	Vehicle Lighting	35.29
169.49	Head Lamps	35.29
169.50	Rear Lamps	35.20
169.57	Vehicle Signals	35.21
169.67	Brakes	35.32
169.68	Horns	35.33

169.69	Mufflers	35.34
169.70	Rear View Mirrors	35.35
169.71	Windshields	35.36
169.72	Surface of Tires, Tires with Metal Studs	35.37
169.90-169.95, inclusive	Offenses et al.	35.37
169.96	Interpretation and Effect	35.39
169.99	Uniform Traffic Ticket	35.40

"The above-reference Sections of Minnesota Statute Chapter 169 are hereby incorporated as sub-sections of Section 35 of this Band Statute. A sub-section provisions within any specific section of Chapter 169 which is not listed is hereby incorporated as a specific sub-sectional provisions within Section 35 of this Band Statute. Any violation of the above-referenced Sections of Chapter 169 of Minnesota Statutes shall be cited by any Band Law Enforcement Officer as a specific subsection violation of Section 35 of this Band Statute."

Cross References

Juvenile delinquency, violations heard in Criminal Division, *see* 24 MLBS § 4305.

Off-road use of motor bikes, cycles or scooters, criminal offenses, *see* 24 MLBS § 1262.

§ 401. Driver's License.

- (a) Any person who shall drive or operate any motor vehicle which is self-propelled and any vehicle propelled or drawn by a self-propelled vehicle, and not deriving its power from overhead wires with the exception of snowmobiles, shall do so under a valid license issued by any domestic or foreign Department of Public Safety. Any privilege to operate a motor vehicle which is suspended by the Commissioner of Public Safety shall also suspend said right on roads under the jurisdiction of the Band. Any person who shall operate any motor vehicle without a license, shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to labor for a period of time not to exceed 180 days, and/or a fine not to exceed \$500.00
- (b) Any person who is licensed in good standing to operate a motor vehicle shall have his/her license in his/her immediate possession at all times when operating a motor vehicle and shall display the same upon demand of an officer authorized by law to enforce provisions of this title. However, no person shall be found guilty of a lack of possession offense if he shall produce a valid driver's license to the Law Enforcement Administration within 5 days of the date of a citation. Any person who fails to produce a valid driver's license shall be deemed guilty of an offense, and upon conviction thereof, may be fined in an amount not to exceed \$100.00, and be required to post an assurance bond in an amount deemed appropriate by the Court.
- (c) Any person whose driver's license or driving privilege has been suspended shall not operate a motor vehicle under any loan, lease or rental conditions from any licensed owner of a motor vehicle, except under conditions of emergency medical care for

another person. Any person who shall so act, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period of time not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §§ 53.01, 53.03, 53.04.
Band Statute 1097-MLC-52, §§ 35.01, 35.03, 35.04.

§ 402. Insurance.

- (a) Any person who shall own a motor vehicle of a type which is required to be registered under the laws of the Non-Removable Mille Lacs Band of Chippewa Indians or licensed or is principally garaged on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall maintain during the period in which operation or use is contemplated a plan of reparation insuring against loss resulting from liability imposed by law for injury and property damage sustained by any person arising out of the ownership, maintenance, operation or use of the motor vehicle. The non-resident owner of a motor vehicle which is not required to be registered or licensed, or which is not principally garaged on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, shall maintain such security in effect continuous throughout the period of operation, maintenance or use of such motor vehicle on the roads under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians with respect to accidents that occur on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. Any person who shall operate a motor vehicle on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians without motor vehicle insurance coverage, shall be deemed guilty of operating a motor vehicle without insurance, and upon conviction thereof, shall be sentenced to labor not to exceed a period of 180 days, and/or a fine not to exceed \$500.00.

- (b) Upon the request of a law enforcement official, any person operating a vehicle registered under the laws of the Band, shall display to said officer proof of vehicle insurance. Failure to provide such proof within seven (7) days from the date of request, shall be grounds for the Court to order the seizure of the vehicle license plate and/or vehicle.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §§ 35.08, 35.42.
Band Statute 1164-MLC-6, § 54.08.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

§ 403. Careful and Prudent Driving; Speed.

- (a) Every person operating a vehicle of any character on a public road within the territorial jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall drive in a careful and prudent manner, and generally at a rate of speed no greater than is reasonable and proper, and so as not to unduly or unreasonably endanger the life, limb, property or other rights of any person entitled to the use of the road. A speed limit of 30 miles per hour is established as reasonable and proper.

- (b)
 - (1) No person shall drive a vehicle on any road under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event, speed shall be so restricted as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the roads in compliance with the legal requirement and the duty of all persons to use due care.
 - (2) Where no special hazard exists, a speed limit of 30 miles per hour shall be lawful, but any speeds in excess of such limit shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful. Whosoever violates the provisions of this subsection shall be deemed guilty of a speeding offense, and upon conviction thereof, shall be sentenced to a fine of \$ 1 00.00 for the first offense, and an additional \$100.00 for each conviction thereafter. Any person whom the Court deems to be a habitual speeder after two convictions within a six month period of time shall be required to forfeit driving privileges and to post an assurance bond in the amount of \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.
Band Statute 1164-MLC-6, § 53.

§ 404. Reckless Driving.

Any person who shall drive or operate any motor vehicle, or any other vehicle, including a snowmobile and three wheel vehicle, in a manner dangerous to the public safety, shall be deemed guilty of an offense of reckless driving, and upon conviction thereof, shall be sentenced to labor for a period of time not to exceed 1 80 days, and/or a fine not to exceed \$500.00. Additionally, at the discretion of the Court, the privilege to operate a motor vehicle on any road under the jurisdiction of the Band may be suspended for a period not to exceed 180 days.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.02.

Band Statute 1164-MLC-6, § 53.02.

§ 405. Driving Under Influence of Alcohol or Controlled Substance.

Any person who shall operate, drive or be in physical control of any motor vehicle on the roads under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, when such person is under the influence of alcohol, or when such person is under the influence of a controlled substance, or when such person is under the influence of any combination of the above two conditions, or when any such person's alcohol concentration is 0.10 or more, shall be deemed guilty of driving under the influence, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and/or be required to post an assurance bond in an amount at the discretion of the Court.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.05

Band Statute 1164-MLC-6, § 53.05.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

Prohibited drugs, *see* 23 MLBS § 1.

§ 406. Open Bottle Law.

Any person who shall have in his/her possession on his person while in a private motor vehicle upon the roads under the jurisdiction of the Band, any bottle or receptacle containing intoxicating liquor or non-intoxicating malt liquor which has been opened, or the seal broken, or the contents of which have been partially removed. Additionally, no person shall drink or consume intoxicating liquors or non-intoxicating malt liquor in any motor vehicle when such vehicle is upon the roads under the jurisdiction of the Band. A utility compartment or glove compartment shall be deemed to be the same as "on his or her person". Whosoever violates the provisions of this section shall be deemed guilty of an open bottle offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.06.

Band Statute 1164-MLC-6, § 53.06.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

Seizure and confiscation of substances found in motor vehicle, *see* 19 MLBS § 503.

Seizure and confiscation of substances found in watercraft, *see* 20 MLBS § 405.

§ 407. Parking in Restricted Area.

Any employee who shall park his/her vehicle in a restricted area in violation of any order lawfully issued by the Commissioner of Administration, shall be liable upon conviction for a fine of \$3.00. The Commissioner of Administration is hereby authorized to promulgate regulations governing all parking areas of employees' vehicles during employment hours. All regulations of the Commissioner of Administration shall be effective ten (10) calendar days after public posting in officially designated areas. The Commissioner of Administration shall by order, designate an area of each band-owned building for such notices no later than Friday, October 3, 1986.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.43.

Cross References

Parking areas for employees, *see* Admin. Comm. Order 22-85.

§ 408. Definitions.

[See Historical and Statutory Notes preceding 19 MLBS § 401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.12

§ 409. Signs, Signals Marking.

[See Historical and Statutory Notes preceding 19 MLBS § 401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.13.

§ 410. Unauthorized Signs.

[See Historical and Statutory Notes preceding 19 MLBS § 401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.14.

§ 411. Unlawful to Possess, Alter or Remove Signs.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.15.

§ 412. Accidents.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.16.

§ 413. Impeding Traffic.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.17.

§ 414. Emergency Vehicles.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.18.

§ 415. Right of Way.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.19.

§ 416. Operation of Bicycles.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.20.

§ 417. Stopping, Standing and Parking.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.21.

§ 418. Police may Move Cars.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.22.

§ 419. Good Samaritan.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.23.

§ 420. Obstructing View of Driver.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.24.

§ 421. Littering.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.25.

§ 422. School Buses.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.26.

§ 423. Hitching Behind Vehicles.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.27.

§ 424. Vehicle Lighting.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.28.

§ 425. Head Lamps.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.29.

§ 426. Rear Lamps.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.30.

§ 427. Vehicle Signals.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.31.

§ 428. Brakes.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.32.

§ 429. Horns.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.33.

§ 430. Mufflers.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.34.

§ 431. Rear View Mirrors.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.35.

§ 432. Windshields.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.36.

§ 433. Surface of Tires; Tires with Metal Studs.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.37.

§ 434. Offenses et al.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.38.

§ 435. Interpretation and Effect.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.39.

§ 436. Uniform Traffic Ticket.

[See Historical and Statutory Notes preceding 19 MLBS §401]

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.40.

§ 437. Fine.

The Court of Central Jurisdiction, shall impose a fine of \$20.00 for each violation of the provisions of Minnesota Statutes Chapter 169 relating to highway traffic regulations that have been incorporated by reference as traffic regulations of the Mille Lacs Band of Chippewa Indians upon conviction of violating any said regulation. This section applies only to violations found in 19 MLBS §§ 402(b), 408-436, and 504(b).

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 38.03.

§ 438. Guilty Plea.

Any person cited by a law enforcement officer of the Mille Lacs Band for violation of traffic regulations found in 19 MLBS §§ 402(b), 408-436, and 504(b) who desires to plead guilty and

forego judicial process may pay a fine of \$20.00 for each such violation. Payment of the fine constitutes an admission of guilt.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52. § 38.04.

CHAPTER 6

POLICE POWERS

Section

501. Powers of Natural Resource Officer.

502. Powers of Law Enforcement Officer.

503. Seizure and Confiscation of Substances and Vehicles.

504. Hindering, Resisting, Obstructing or Disobeying Law Enforcement Officer.

505. Notice to Appear.

Cross References

Natural resources protection, enforcement, *see* 11 MLBS § 2601.

Warrant, summons and arrest, *see* 24 MLBS § 4101.

§ 501. Powers of Natural Resource Officer.

- (a) Any duly sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Chippewa Indians is hereby authorized and empowered to enforce the provisions of this title and to execute and serve all warrants and processes issued by any Justice of the Court of Central Jurisdiction under any law of the Mille Lacs Band of Chippewa Indians. Any Natural Resource Officer may arrest without a warrant any person under the jurisdiction of the Band detected in the actual violation of any provisions of Band law, and to take such person before the Court of Central Jurisdiction and make a proper complaint.
- (b) For purposes of enforcing the provisions of this title any duly sworn Natural Resource Officer shall be considered as a duly sworn law enforcement officer of the Band.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 36.

§ 502. Powers of Law Enforcement Officer.

Any duly sworn law enforcement officer is hereby authorized and empowered to enter upon any trust land within the jurisdiction of the Band for the purpose of carrying out the duties and functions of his office, or to make investigations of any violation of the Band's motor vehicle laws, and in aid thereof to take affidavits upon oath administered by him, and to cause proceedings to be instituted if proofs at hand warrant it.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 36.02.

§ 503. Seizure and Confiscation of Substances and Vehicles.

- (a) Any duly sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Chippewa Indians is hereby authorized and empowered to seize and confiscate in the name of the Band, any substance described in 9 MLBS § 406 or 23 MLBS §§ 1 (a) or 7 which is possessed in a motor vehicle operated on the roads of the Band in violation of the appropriate statutory section. Anything seized or confiscated shall be held by the Band until proper determination of the case by the Court of Central Jurisdiction is finalized.
- (b) Any duly sworn law enforcement officer of the Band is hereby authorized and empowered to seize and confiscate in the name of the Band, any vehicle in which substances described in subsection (a) are found. Any vehicle so seized, impounded or confiscated shall be held by the Band until proper determination of the case by the Court of Central Jurisdiction is finalized. It shall be the responsibility of the record owner of the vehicle to pay for all costs associated with any seizure, confiscation or impoundment action initiated by a Law Enforcement Officer in the performance of his duty. The Mille Lacs Band of Chippewa Indians, any of its officers, agents and employees, shall not be liable for damages to any vehicle so seized, confiscated or impounded.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 36.04.

Cross References

Actions challenging seizure of property, *see* 19 MLBS § 13.
Search without warrant, *see* 24 MLBS § 4108.
Unreasonable searches and seizures, *see* 1 MLBS § 2.

§ 504. Hindering, Resisting, Obstructing or Disobeying Law Enforcement Officer.

- (a) It shall be illegal for any person under the jurisdiction of the Band to willfully hinder, resist, or obstruct a duly sworn law enforcement officer of the Band in the performance of his official duty, or refuse to submit anything called for by him for his inspection.
- (b) It is a misdemeanor for any person to willfully fail or refuse to comply with any lawful order or direction of any law enforcement officer invested by law with authority to direct, control or regulate traffic on roads subject to the jurisdiction of the Mille Lacs Band.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §§ 35.41, 37.

Cross References

Fine, *see* 19 MLBS §§ 437, 438.

§ 505. Notice to Appear.

When a person is arrested for any violation of law which is punishable as a civil misdemeanor and is not taken into custody and immediately taken before the Court, the arresting officer shall prepare in quadruplicate, written notice to appear before the Court. This notice has the effect of, and serves as a summons and complaint. Said notice shall conform with applicable provisions of the United States Government, United States Department of Interior, Title 25-Indians. In order to secure release, without being taken into custody and immediately taken before the Court, the arrested person must give his written promise so to appear before the Court by signing, in quadruplicate, a written notice prepared by the arresting officer. The officer shall retain the original of the notice and deliver the copy thereof marked "summons" to the person arrested. Thereupon the officer shall release the person from custody. If the person so summoned fails to appear on the return day, the Court shall issue a warrant for his arrest, and upon his arrest proceedings shall be had as in any other case.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 36.01.

CHAPTER 7

PARKING PRIVILEGES FOR PHYSICALLY HANDICAPPED PERSONS

Section

- 601. Definitions.**
- 602. License Plates for Handicapped Persons.**
- 603. Identifying Certificate.**
- 604. Scope of Privilege.**
- 605. Prohibition.**
- 606. Signs; Parking Spaces to Be Free of Obstructions.**
- 607. Penalty.**

§ 601. Definitions.

For the purposes of this chapter "physically handicapped person" means a person who:

- (a) because of disability cannot walk without significant risk of falling;
- (b) because of disability cannot walk 200 feet without stopping to rest;
- (c) because of disability cannot walk without the aid of another person, a walker, a cane, crutches, braces, a prosthetic device, or a wheelchair;
- (d) is restricted by a respiratory disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometer, is less than one meter;
- (e) has an arterial oxygen tension (PA⁰2) of less than 60 mm/hg on room air at rest;
- (f) uses portable oxygen; or
- (g) has a cardiac condition to the extent that the person's functional limitations are classified in severity as class IV according to standards set by the American Heart Association.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §§ 52.04, 52.052.

§ 602. License Plates for Handicapped Persons.

- (a) When a motor vehicle registered under 19 MLBS § 106, or a self-propelled recreational vehicle, is owned or primarily operated by a permanently physically handicapped person, the owner may apply for and secure from the Deputy Registrar of the Mille Lacs Band two license plates with attached emblems, one plate to be attached to the front, and one to the rear of the vehicle. Application for the plates must be made at the time of renewal for first application for registration when the owner first applies for the plates, the owner must submit a physician's statement on a form developed by the Deputy Registrar of the Mille Lacs Band of Chippewa Indians.
- (b) The Deputy Registrar of the Mille Lacs Band of Chippewa Indians shall furnish two license plates with attached emblems to each eligible owner. The emblem must bear the internationally accepted wheelchair symbol, approximately three inches square. The emblem must be large enough to be visible plainly from a distance of 50 feet. An applicant eligible for the special plates shall pay the motor vehicle registration fee authorized by law less a credit of \$1 for each month registered.
- (c) If a physically handicapped person parks a vehicle displaying license plates described in this section or any person parks the vehicle for a physically handicapped person, that person shall be entitled to park the vehicle as provided in 19 MLBS § 604.
- (d) A person who uses the plates provided under this section on a motor vehicle in violation of this section is guilty of an offense and is subject to a fine of \$500. This subdivision does not preclude a person who is not physically handicapped from operating a vehicle bearing the plates if the person is the owner of the vehicle and permits its operation by a physically handicapped person, or if the person operates the vehicles with the consent of the owner who is physically handicapped. A driver who is not handicapped is not entitled to the parking privileges provided in this section and in 19 MLBS § 604 unless parking the vehicle for a physically handicapped person.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 52.

Cross References

Registration plates, *see* 19 MLBS § 141.

§ 603. Identifying Certificate.

- (a) The Deputy Registrar of the Mille Lacs Band shall issue a special identifying certificate for a motor vehicle when a physically handicapped applicant submits a physician's statement. The Deputy Registrar shall design separate certificates for persons with permanent and temporary disabilities that can be readily distinguished

from each other from outside a vehicle at a distance of 25 feet. The certificate is valid for the duration of the persons disability, as specified in the physician's statement, up to a maximum of six years. A person with a disability of longer duration will be required to renew the certificate for additional period of time, up to six years each, as specified in the physician statement.

- (b) The Reciprocity Director shall develop a form for the physician's statement. The statement must be signed by a licensed physician who certifies that the applicant is a physically handicapped person as defined in 19 MLBS § 601 The Director of Reciprocity may request additional information from the physician if needed to verify the applicant's eligibility. The Physician's statement must specify whether the disability is permanent or temporary, and if temporary, the opinion of the physician as to the duration of the disability. A physician who fraudulently certifies to the Director of Reciprocity that a person is a physically handicapped person as defined in 19 MLBS § 601, and that the person is entitled to the license plates authorized by 19 MLBS § 602 or to the certificate authorized by this section, is guilty of an offense and is subject to a fine of \$500.00.
- (c) When the Deputy Registrar is satisfied that a motor vehicle is used primarily for the purpose of transporting physically handicapped persons, the division may issue without charge a special identifying certificate for the vehicle. The operator of a vehicle displaying the certificate has the parking privileges provided in 19 MLBS § 604 while the vehicle is in use for transporting physically handicapped persons. The certificate issued to a person transporting physically handicapped persons must be renewed every third year. On application and renewal, the person must present evidence that the vehicle continues to be used for transporting physically handicapped persons.
- (d) A certificate must be made of plastic or similar durable material, must be distinct from certificates issued before January 1, 1988, and must bear its expiration date prominently on its face. A certificate issued to a temporarily disabled person must display the date of expiration of the duration of the disability, as determined under subsection (a). Each certificate must have printed on the back a summary of the parking privileges and restrictions that apply to each vehicle in which it is used. The Deputy Registrar may charge a fee of \$5.00 for a duplicate to replace a lost, stolen, or damaged certificate.
- (e) If a peace officer finds that the certificate is being improperly used, the officer shall report the violation to the law enforcement officers of the Non-Removable Mile Lacs Band of Chippewa Indians and the Deputy Registrar may revoke the certificate. A person who uses the certificate in violation of this section, is guilty of an offense and is subject to a fine of \$500.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §§ 52.053-52.055.

§ 604. Scope of Privilege.

- (a) A vehicle that prominently displays the certificate authorized by this chapter may be parked by or for a physically handicapped person:
 - (1) in a designated handicapped parking place, as provided in 19 MLBS § 605, and;
 - (2) in a metered parking space without obligation to pay the meter fee.
- (b) For purpose of this section, a certification is prominently displayed if it is displayed on the dashboard in the left hand corner of the front windshield of the vehicle with no part of the Certificate obscured.
- (c) Notwithstanding paragraph 1 of subsection (a), this section does not permit parking in the areas prohibited by 19 MLBS § 605, spaces reserved for specified purposes or vehicles.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 52.05.

§ 605. Prohibition.

A person shall not: park a motor vehicle in or obstruct access to a parking space designated and reserved for the physically handicapped, on either private or public property; park a motor vehicle in or obstruct access to an area designated by a local governmental unit as a handicapped transfer zone; or exercise the parking privilege provided in 19 MLBS § 604 unless:

- (a) That person is physically handicapped person as defined in 19 MLBS § 601, or the person is transporting or parking a vehicle for a physically handicapped person; and
- (b) The vehicle visibly displays one of the following: a certificate issued under 19 MLBS § 603, or an equivalent certificate, insignia, or license plate issued by Minnesota or another state or one of its political subdivisions

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 52.06.

§ 606. Signs; Parking Spaces to Be Free of Obstructions.

- (a) Handicapped parking spaces must be designated and identified by the posting of signs incorporating the international symbol of access in white on blue and indicating that the parking space is reserved for handicapped persons with vehicles displaying the required certificate, license plates or insignia. A sign posted for the purpose of this section must be visible from inside a vehicle parked in the space, be kept clear of snow or other obstruction which block its visibility, and be non-movable or only movable by authorized person.
- (b) The owner or manager of the property on which the designated parking space is located shall ensure that the space is kept free of obstruction. If the owner or manager allows the space to be blocked by snow, merchandise or similar obstruction for 24 hours after receiving a warning from a peace officer, the owner or manager is guilty of an offense and subject to a fine up to \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 52.07.

§ 607. Penalty.

A person who violates 19 MLBS § 605 is guilty of an offense and shall be fined not less than \$100.00 or more than \$200.00. This chapter shall be enforced in the same manner as violations of other Band Statutes. Law Enforcement Officers have the authority to tag vehicles parked on reservation property in violation of 19 MLBS §605. A physically handicapped person, or a person parking a vehicle for a handicapped person, who is charged with violating 19 MLBS § 605 because the person parked in a handicapped parking space without the required certificate or license plates, shall not be convicted if the person produces in court or before the court appearance the required certificate or evidence that the person has been issued license plates under this chapter, and demonstrate entitlement to the certificate or plates at the time of arrest or tagging.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 52.08.

Cross References

Criminal procedure, *see* 24 MLBS § 4001.

TITLE 20 - WATERCRAFT

<u>Chapter</u>	<u>Section</u>
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CHAPTER 1

GENERAL PROVISIONS

Section

1. Findings and Declarations.
2. Construction and Severability.
3. Reservation of Right of Amendment.
4. Savings Provision.
5. Definitions.
6. Applicability of Federal Boat Safety Act of 1971.
7. Reciprocity with State of Minnesota.
8. Rulemaking Authority of Commissioner.
9. Model State Boat Act Implementation.
10. Limited Waiver of Sovereign Immunity.
11. Applicability of Certain Statutory Provisions.
12. Application of Motor Vehicle Laws to Watercraft.
13. Duplicate Certificates or Decals.
14. Cancellation of Title or Registration.
15. Boat Safety Program Content.
16. Disposition of Monies Collected.

§ 1. Findings and Declarations.

- (a) The Band Assembly hereby finds and declares that it is a policy of the Non-Removable Mille Lacs Band of Chippewa Indians to promote the use and enjoyment of the natural resources as well as, to protect the quality of the environment encompassing the trust lands and contiguous waters within the exterior boundaries of the Mille Lacs and Sandy Lake Reservations as described in the Treaty of 1855 for the benefit of enrolled members of the Band.

- (b) The Band Assembly hereby finds and declares that it is necessary to regulate the use of watercraft on the waters contiguous to trust land by enrolled members of the Band in order to:
- (1) protect the safe exercise of treaty fishing and wild rice harvesting;
 - (2) protect the ecology of the lake; and
 - (3) prevent water pollution.
- (c) The Band Assembly hereby finds and declares that the establishment of a boat safety program containing standards for registration and titling of watercraft, and for the safe operation of said watercraft on the waters is desirable to prevent the loss of lives, loss or damage to property and vessels, and protection of the marine environment.
- (d) The Band Assembly hereby finds and declares that it is a policy of the Non-Removable Mille Lacs Band of Chippewa Indians to seek a higher degree of reciprocity and comity with the State of Minnesota by establishing concurrent motor vehicle and watercraft registration and titling programs which promotes government to government relations.
- (e) The Band Assembly hereby finds and declares that a public policy of closer cooperation and assistance between the Non-Removable Mille Lacs Band of Chippewa Indians and the State of Minnesota offers increased opportunities for the protection of the natural resources and the general health, welfare and safety of the citizens of both jurisdictions.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-5 1 T.I, § 1.

§ 2. Construction and Severability.

The provisions of this title shall be liberally construed so as to effectuate the purposes thereof. The provisions of this title shall be severable and if any phrase, clause, sentence, or provision of this law is declared to be contrary to the Constitution of the Minnesota Chippewa Tribe or any of the laws of the Band or the application thereof to any agency, person or circumstance is held invalid by the Court of Central Jurisdiction, the validity of the remainder of this title and the applicability thereof to any agency, person or circumstance shall not be affected thereby. If the provisions of this title or any part thereof shall be held contrary to the laws of the State of Minnesota, the other provisions of said law unaffected shall remain in full force and effect as to all severable matters.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.VI, § 10.

§ 3. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend or repeal the several provisions of this title, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.VI, § 11.

§ 4. Savings Provision.

Compliance with this title or standards, regulations, or orders promulgated hereunder shall not necessarily relieve any person subject to the jurisdiction of this title from liability at common law or under civil or criminal law of the State of Minnesota pursuant to the provisions of 28 U.S.C. 1360 and 18 U.S.C. 1162.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-5 1, T.VI, § 8.

§ 5. Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

- (a) **"Administration"** means the Natural Resources Administration of the Executive branch of government in and for the Non-Removable Mille Lacs Band of Chippewa Indians.
- (b) **"Associated equipment"** means any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair or improvement of such system, part or component; any accessory or equipment for, or appurtenance to, a boat; and any marine safety article accessory, or equipment intended for use by a person on board a boat; but excluding radio equipment.

- (c) **"Boat"** means any vessel manufactured or used primarily for noncommercial use; or leased, rented or chartered to another for the latter's noncommercial use; or engaged in the carrying of six or fewer passengers, whether self or motor propelled.
- (d) **"Commissioner"** means the Commissioner of Natural Resources in and for the Non-Removable Mille Lacs Band of Chippewa Indians.
- (e) **"Operate"** means to navigate or otherwise use a watercraft.
- (f) **"Operator"** means every person who operates or is in actual physical control of a watercraft.
- (g) **"Owner"** means a person who claims lawful possession of a vessel by virtue of legal title or equitable interest therein which entitles him to such lawful right to possession of a vessel through purchase, exchange, gift, inheritance or other legal action.
- (h) **"Passenger"** means every person carried on board a vessel other than the owner or his representative; the operator; bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.
- (i) **"Use"** means operate, navigate, or employ.
- (j) **"Vessel"** includes every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.
- (k) **"Watercraft"** means any contrivance used or designed for navigation on water including:
 - (1) duck boat during the duck hunting season,
 - (2) sailboat,
 - (3) canoe,
 - (4) rice boat during the harvest.
- (l) **"Waters"** as used herein, are defined as any lake, pond or other body of water capable of substantial beneficial use, and any waters to which the Band members have access.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, TI, § 2.

§ 6. Applicability of Federal Boat Safety Act of 1971 (46 U.S.C. 1451).

The provisions of the Federal Boat Safety Act shall apply as a federal law coordinating the national boat safety program in the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.I, § 3.

§ 7. Reciprocity with State of Minnesota.

The Commissioner of Natural Resources is authorized and directed to negotiate a watercraft reciprocity agreement with the Department of Natural Resources in and for the State of Minnesota. The Band Assembly hereby empowers the Commissioner of Natural Resources to execute the said reciprocity agreement on behalf of the Non-Removable Mille Lacs Band of Chippewa Indians upon the advice of the Chief Executive and the consent of the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, TI, § 4.

§ 8. Rulemaking Authority of Commissioner.

- (a) The Commissioner of Natural Resources may issue regulations necessary or appropriate under the provisions of this section to carry out the purposes of this chapter of law. All said regulations adopted hereunder shall be pursuant to lawful Commissioner's Order pursuant to the provisions of 4 MLBS § 7(h).
- (b) The Commissioner shall issue regulations establishing a system for the care and maintenance of official records, an incident and casualty reporting system, minimum safety standards for boats and associated equipment, requiring mg the installation, carrying or using of associated equipment on boats and classes of boats subject to the provisions of this law; and prohibiting the installation, carrying or using of associated equipment which does not conform with safety standards established pursuant to such regulations or other applicable law.
- (c) In establishing a need for formulating and prescribing discretionary regulations and standards, the Commissioner shall among other things:
 - (1) consider the need for and the extent to which the regulations or standards will contribute to boating safety;

- (2) consider relevant available boating safety standards, statistics and data including public and private research, development testing and evaluation;
- (3) consider whether any proposed regulation or standard is reasonable and appropriate for the particular type of boat or associated equipment for which it is prescribed.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, TI, § 5.

§ 9. Model State Boat Act Implementation.

The Commissioner of Natural Resources is herewith authorized to implement as he deems appropriate the substantive content of the model State Boat Act as approved by the National Association of State Boating Law Administrators in conjunction with the council of state governments.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.VI, § 9.02.

§ 10. Limited Waiver of Sovereign Immunity.

The Band Assembly hereby waives sovereign immunity to be sued only in the Court of Central Jurisdiction in cases where a seizure of property occurs pursuant to the provisions of this title. However, any such action shall be directed solely against the Commissioner of Natural Resources, in his/her official capacity in order to challenge any seizure action and shall be limited to actions seeking an order for the return of goods seized. All other causes of action which arises pursuant to this title shall be limited in relief to declaratory or injunctive measures and no damages, monetary or otherwise, including but not limited to attorneys' fees, shall be permitted.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.I, § 7.

Cross References

Seizure and confiscation of certain substances, or of vessels containing them, *see* 20 MLBS § 405.

§ 11. Applicability of Certain Statutory Provisions.

The provisions of 24 MLBS § 3301 et seq. Remedies for Creditors and 18 MLBS § 301 Uniform Commercial Code of the State of Minnesota are hereby declared as mandatory provisions of this title of law available to all lienholders for the recovery of a vessel when the owner of record is in default of any security agreement entered into with a member of the Non-Removable Mille Lacs Band of Chippewa Indians who resides on land subject to the jurisdiction of the Band. Provisions for due process in the Court of Central Jurisdiction pursuant to 24 MLBS § 3301 et seq. are mandatory prior to any repossession action by any lien holder.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T1, § 8.

Cross References

Security interests, certificates of title, *see* 20 MLBS § 207.

§ 12. Application of Motor Vehicle Laws to Watercraft.

The provisions of 19 MLBS §§ 106-108, 111, 201-208, 241-243, 271-276 and 301-305 relating to motor vehicle registration, certification of titles, certificate issuance, ownership transfer and perfection of security interest and other provisions which may be applied to vessels subject to this title shall be so applied by order of the Commissioner of Natural Resources if they are not inconsistent with or absent from the provisions of this title.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.11, § 4.01.

§ 13. Duplicate Certificates or Decals.

- (a) If a certificate of title, a certificate of registration, or a pair of decals is lost, stolen, mutilated or destroyed or becomes illegible, the first priority secured party or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the Natural Resources Administration, shall promptly apply for and may obtain a duplicate certificate or replacement decals upon payment of \$ 1 and furnishing information satisfactory to the Administration.
- (b) An application for a duplicate certificate of title shall be accompanied by an affidavit of loss or destruction in a form approved by the Commissioner and signed by the first secured party or, if none, the owner or legal representative of the owner.

- (c) The duplicate certificate of title or registration shall contain the legend, "This is a duplicate certificate." It shall be mailed to the first priority secured party named in it or, if none, to the owner.
- (d) A person recovering an original certificate of title, certificate of registration, or decal for which a duplicate replacement has been issued shall promptly surrender the original to the Natural Resources Administration.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, § 5.

Cross References

Certificates of title, *see* 20 MLBS § 201.

Registration and decal, *see* 20 MLBS § 106.

§ 14. Cancellation of Title or Registration.

The Commissioner shall cancel a title or registration whenever:

- (a) a transfer of title is set aside by court order or judgment; or
- (b) it is subsequently discovered that the issuance or possession of a title or registration is prohibited by law.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, § 9.

Cross References

Certificates of title, *see* 20 MLBS § 201.

Registration, *see* 20 MLBS § 101.

§ 15. Boat Safety Program Content.

- (a) The Commissioner of Natural Resources shall prior to January 1, 1989, issue a Boat Safety Program for the Mille Lacs Band of Chippewa Indians which incorporates a Band numbering system approved under this title, provides for patrol and other activity to assure enforcement of the Band's boat safety laws and regulations, provides for boat safety education programs and provides for the submission of

annual reports to the Band Assembly and the appropriate federal agency of the United States.

- (b) The Commissioner of Natural Resources is hereby authorized to submit the Band's Boat Safety Program to the United States Department of Transportation or other appropriate federal agency with jurisdiction over the Federal Boat Safety Program. The purpose of the submission of the Band's program is to participate in the allocation of federal funds for the purposes set forth in 46 U.S.C. 145 1 et seq. and those purposes herein stated.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.VI, § 9.

§ 16. Disposition of Monies Collected.

All monies, including judicially imposed fines received and receipted pursuant to the provisions of this title shall be held in a separate account in the name of the Non-Removable Mille Lacs Band of Chippewa Indians Boat Safety Program until lawfully disbursed by appropriation of the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-5 1, T.VI, § 7.

Cross References

Enforcement of this title, *see* 20 MLBS § 401.

CHAPTER 2

REGISTRATION OF WATERCRAFT

Section

- 101. Registration Required.**
- 102. Display of Registration Number and Valid Decal.**
- 103. Exceptions from Vessel Registration.**
- 104. Commissioner's Powers and Duties.**
- 105. Application for Registration.**
- 106. Issuance of Registrations and Decals.**
- 107. Registration Periods-Renewals.**
- 108. Transfer of Registrations.**
- 109. Notice of Changed Conditions.**

Cross References

Cancellation of title or registration, *see* 20 MLBS § 14.
Duplicate certificates or decals, *see* 20 MLBS § 13.
Watercraft registration regulations, *see* Nat. Res. Comm. Order 83-88.

§ 101. Registration Required.

All enrolled members of the Non-Removable Mille Lacs Band of Chippewa Indians who reside or principally garage a vessel on lands subject to the jurisdiction of the Band shall register said vessel with the Mille Lacs Natural Resource Administration effective May 1, 1988. No resident enrolled member of the Mille Lacs Band may own or operate any vessel on the waters contiguous to lands subject to the jurisdiction of the Band or on the public waters within the boundaries of the State of Minnesota unless said vessel has been registered with the Mille Lacs Natural Resources Administration.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T. II, § 1.

§ 102. Display of Registration Number and Valid Decal.

All vessels owned or operated on the waters under the jurisdiction of the Band or the State of Minnesota by an enrolled member of the Mille Lacs Band who resides on land subject to the jurisdiction of the Band shall display a Band registration number and valid decal in accordance with the provisions of this title.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.II, § 2.

§ 103. Exceptions from Vessel Registration.

Vessel registration is required under this title except for the following:

- (a) vessels owned by the Band or political subdivision thereof, used principally for governmental purposes and clearly identifiable as such;
- (b) vessels owned by enrolled members of the Non-Removable Mille Lacs Band of Chippewa Indians who do not reside or principally garage said vessel on lands subject to the jurisdiction of the Band;

- (c) vessels owned by non-enrolled members of the Minnesota Chippewa Tribe which are not principally garaged on lands subject to the jurisdiction of the Band;
- (d) vessels used as a ship's lifeboat.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.II, § 3.

§ 104. Commissioner's Powers and Duties.

The Commissioner of Natural Resources shall provide for the issuance of vessel registrations and may appoint Natural Resource officers, as agents, for the purpose of collecting fees and issuing registration numbers and decals.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.II, § 4.

§ 105. Application for Registration.

Applications for a vessel registration shall be made to the Commissioner of Natural Resources or his authorized agent in the manner and upon forms prescribed by the Commissioner. The application shall state the name and address of each owner of the vessel, a description of make, model, year, and manufacturer of vessel, and such other information as may be required by the Commissioner, shall be signed by at least one owner and shall be accompanied by a vessel registration fee of \$5 per year and any applicable excise taxes imposed pursuant to Band law.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.II, § 5.

§ 106. Issuance of Registrations and Decals.

Upon receipt of a proper application and the registration fee, the Commissioner or his designated agent shall assign a registration number and issue a decal for each vessel. The registration number and decal shall be issued and affixed to the vessel in the manner prescribed by the Commissioner consistent with the standard numbering system for vessels set forth in Volume 33 Part 174 of the Code of Federal Regulations. A valid decal affixed as prescribed shall indicate compliance with the annual registration requirements of this title.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.II, § 6.

§ 107. Registration Periods—Renewals.

All vessel registrations and decals are valid for a period of one year commencing May 1 of each calendar year. For registration periods of less than one year, the Commissioner may collect pro-rated annual registration fees and excise taxes based upon the number of months in the registration period. Vessel registrations are renewable each year in the manner prescribed by the Commissioner upon payment of the vessel registration fee and the excise tax. Upon renewing a vessel registration, the Commissioner shall issue a new decal to be affixed as prescribed by law.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.II, § 7.

§ 108. Transfer of Registrations.

Any person subject to the jurisdiction of this title acquiring a vessel from a dealer or a vessel already validly registered under the name of different owner or the laws of the State of Minnesota or any other state jurisdiction shall, within 15 days of the acquisition or purchase of the vessel, apply to the Natural Resources Administration for transfer of the vessel registration, and the application shall be accompanied by a transfer fee of \$2.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.II, § 8.

§ 109. Notice of Changed Conditions.

Notice shall be given to the issuing authority by the owner indicated on the certificate of registration within 15 days of the occurrence of any of the following:

- (a) transfer of any part or all of the ownership of a vessel registered under this title;
- (b) any change of address of owner, destruction, loss, abandonment, theft, or recovery of the vessel; or
- (c) loss or destruction of a valid certificate of registration on the vessel.

Historical and Statutory Notes

Source:

Band Statute 1 1 30-MLC-51, T.III, § 4.04.

CHAPTER 3

CERTIFICATES OF TITLE

Section

- 201. Legislative Intent.**
- 202. When Certificate of Title Required.**
- 203. Surrender of Certificates of Title from Exterior Jurisdiction.**
- 204. Surrender of Manufacturer's Certificate of Origin.**
- 205. Application for Certificate of Title.**
- 206. Issuance.**
- 207. Security Interests.**
- 208. Suspension or Revocation of Certificate.**

Cross References

Cancellation of title or registration, see 20 MLBS § 14.

Duplicate certificates or decals, see 20 MLBS § 13.

§ 201. Legislative Intent.

It is the intention of the Band Assembly to establish a system of certificates of title for vessels and watercraft similar to that in existence for motor vehicles. It is the goal of this legislation that the title certificate become *prima facie* evidence of ownership of the vessel it describes so that persons may rely upon that certificate; and that security interests in vessels be perfected solely by notation of a secured party upon the title certificate.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, § 1.

Cross References

Motor vehicles, certificates of title, *see* 19 MLBS § 201.

§ 202. When Certificate of Title Required.

Whenever a vessel is to be registered for the first time as required by this title, application shall be made at the same time for a certificate of title. Any person who purchases or otherwise obtains majority ownership of any vessel subject to the provisions of this title of law shall, within 15 days thereof, apply for a new certificate of title which shows the vessel's change of ownership.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, § 4.02.

§ 203. Surrender of Certificates of Title from Exterior Jurisdiction.

All enrolled members of the Band who reside or principally garage any watercraft on lands subject to the jurisdiction of the Band, and who are holders of vessel or watercraft certificates of titles issued by the State of Minnesota or any other jurisdiction shall surrender said certificate of title at the time of application for a Band certificate of title. The Commissioner of Natural Resources is prohibited from issuing any Band certificate of title for which an existing exterior jurisdiction certificate of title remains outstanding.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, § 2.

§ 204. Surrender of Manufacturer's Certificate of Origin.

Upon application for a certification or title to a new vessel never before titled and sold by an in-state or out-of-state dealer or manufacturer's statement of origin or other document or documents certifying the first conveyance of said vessel after its manufacture. The manufacturer's statement of origin or other similar document or documents shall reflect the model year, make, and hull identification number of the vessel.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, § 6.

§ 205. Application for Certificate of Title.

Applications for certificates of title may be made through the Commissioner of Natural Resources or his designated agents on the form prescribed for this purpose. The fee for a vessel

certificate of title is \$5. Each application for a title certificate shall require the person to be designated as the registered owner to swear under penalties of the perjury laws of this Band or the United States of America that he is the owner or an authorized agent of the owner of the vessel, and that it is free of any claim of lien, mortgage, conditional sale, or other security interests of any person except the person or persons set forth in the application as secured parties.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, § 3.

§ 206. Issuance.

The Commissioner of Natural Resources shall provide for the issuance of vessel certificates of title to the appropriate owner or secured party.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, § 4.

§ 207. Security Interests.

- (a) Security interests in vessels subject to the requirements of this title shall be perfected only by indication upon the vessel's title certificate.
- (b) Security interests may be released or acted upon as provided by the law under which they arose or were perfected. No renewal or extension of any existing security interest is affected by the provisions of this law.
- (c) The method provided in this title of perfecting and giving notice of security interest subject to this title is exclusive.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, §§ 4, 7.

§ 208. Suspension or Revocation of Certificate.

- (a) The Commissioner of Natural Resources shall suspend or revoke a certificate of vessel title if he finds:
 - (1) the certificate of title was fraudulently procured, erroneously issued, or prohibited by law; or

- (2) the vessel has been scrapped, dismantled or destroyed; or
 - (3) a transfer of title is set aside by a court order or judgment.
- (b) Suspension or revocation of a certificate of title does not, in itself, affect the validity of a security interest noted on it.
 - (c) When the Commissioner suspends or revokes a certificate of title, the owner or person in possession of it, shall immediately upon receiving notice of the suspension or revocation mail or hand deliver the certificate to the Commissioner
 - (d) The Commissioner may seize and impound any certificate of title which has been lawfully suspended or revoked.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.III, § 8.

CHAPTER 4

REGULATION OF WATERCRAFT

Section

- 301. Applicability of Minnesota Statutory Watercraft Regulations: Chapter 361.**
- 302. Methods of Operation.**
- 303. Lights.**
- 304. Mufflers.**
- 305. Life Preservers or Life Floats.**
- 306. Use of Vessel in Negligent Manner.**
- 307. Use of Vessel in Grossly Negligent Manner.**
- 308. Use of Vessel While Under the Influence of Alcohol or Drugs Prohibited.**
- 309. Responsible Operation of Watercraft.**
- 310. Operation by Children.**
- 311. Obstruction of Legal Process.**
- 312. Malicious Mischief Against Documents, Stickers or Decals.**
- 313. Duty of Operator Involved in Collision, Accident, or Other Casualty.**
- 314. Immunity from Liability of Persons Rendering Assistance.**
- 315. Penalty.**

§ 301. Applicability of Minnesota Statutory Watercraft Regulations: Chapter 361.

- (a) The Commissioner of Natural Resources is herewith authorized to implement, as he deems necessary and appropriate, substantive content of Minnesota Statutes Chapter

361.01 through 361.28 inclusive, as applicable Band regulatory provisions pursuant to the issuance of a Commissioner's Order.

- (b) All such regulatory provisions implemented pursuant to subsection (a) shall become effective fifteen days after the date of execution and notice to the members of the Band so effected.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 7.

Cross References

Commissioner's orders, *see* 4 MLBS § 8.

§ 302. Methods of Operation.

Every person subject to the jurisdiction of this title who operates a motor propelled boat or vessel on any waters, shall operate the same in a careful and prudent manner at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, size of the lake or body of water, freedom from obstruction to view ahead and so as not to unduly or unreasonably endanger life, limb, property or other rights of any person entitled to the use of such waters.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 1.

§ 303. Lights.

It shall be unlawful for any person subject to the jurisdiction of this title to operate any motor propelled boat or vessel on any such waters without a white light during the hours of darkness, distinctly visible under clear weather conditions for a distance of at least 300 feet.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 2.

§ 304. Mufflers.

All such motor driven boats or vessels shall use a muffler or other similar devise to reduce the sound of exhaust.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 3.

§ 305. Life Preservers or Life Floats.

Every motor driven boat operating on any such waters and carrying passengers for hire or leased for hire, shall have a life preserver or life float for each passenger said boat or vessel has capacity to carry, placed or attached in such manner as to be convenient for use.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 6.

Cross References

Termination of unsafe use of vessel, *see* 20 MLBS § 407.

§ 306. Use of Vessel in Negligent Manner.

Any person subject to the jurisdiction of this title who operates a vessel in such a manner as to endanger or be likely to endanger any person(s) or property shall be negligent and subject to civil and criminal penalties of 20 MLBS §§ 401 and 402.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, TV, § 3.

§ 307. Use of Vessel in Grossly Negligent Manner.

Any person subject to the jurisdiction of this title who by operating a watercraft in a reckless or grossly negligent manner and in willful and careless disregard of life or property and causes personal injury to another and/or damages to the property of another shall be subject to both criminal and civil penalties of 20 MLBS §§ 401 and 402.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, TV, § 4.

§ 308. Use of Vessel While Under the Influence of Alcohol or Drugs Prohibited.

- (a)
 - (1) For the purposes of this section, "vessel" means any watercraft used or capable of being used as a means of transportation on the water.
 - (2) For the purposes of this section, "vessel operator" means a person who is in actual physical control of a vessel.
- (b) A person subject to the jurisdiction of this Band statute is guilty of operating a vessel while under the influence of intoxicating liquor or any drug if the person operates a vessel upon the waters while:
 - (1) the person has 0.10 grams or more of alcohol per 210 liters of breath as shown by analysis of the person's breath, blood or other bodily substance made pursuant to the laws of the Band;
 - (2) the person is under the influence of or affected by intoxicating liquor or any drug; or
 - (3) the person is under the combined influence of or affected by intoxicating liquor and any drug.
- (c) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of the Band or the State of Minnesota shall not constitute a defense against any charge of violating this section. A person cited under this section may upon request be given a breath test for blood alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting Band officer shall administer field sobriety tests when circumstances permit.
- (d) A violation of this section is a misdemeanor and may subject the violator to both criminal and civil penalties of 20 MLBS §§ 401 and 402.

Historical and Statutory Notes

Source:

Bank Statute 1130-MLC-51, T.IV, § 4.

Cross References

Prohibited drugs, *see* 23 MLBS § 1.

§ 309. Responsible Operation of Watercraft.

No person subject to the jurisdiction of this title shall knowingly authorize or permit a person who is under the influence or affected by intoxicating liquor or any drug or who is physically or mentally disabled or incapable, to operate any watercraft.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 5.

§ 310. Operation by Children.

Except in the case of an emergency, no person under the age of 13 years shall operate or be permitted to operate any watercraft propelled by a motor, unless there is present in the watercraft in addition to the operator, his/her parent or legal guardian, or at least one person of the age of 18 years or over.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 5.01.

§ 311. Obstruction of Legal Process.

It shall be unlawful for any person subject to the jurisdiction of this title to willfully hinder, resist, or obstruct a duly authorized official, officer or employee of the Non-Removable Mille Lacs Band of Chippewa Indians in the performance of his/her official duty, or to refuse to submit anything called for by him for inspection.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 8.

Cross References

Authority of officers, *see* 20 MLBS § 405.

§ 312. Malicious Mischief Against Documents, Stickers or Decals.

It shall be unlawful for any person subject to the jurisdiction of the Mille Lacs Band to deface, alter or mutilate any official document, sticker or decal issued in compliance with the provisions of this title.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 9.

§ 313. Duty of Operator Involved in Collision, Accident, or Other Casualty.

The operator of a vessel involved in a collision, accident, or other casualty, to the extent the operator can do so without serious danger to the operator's own vessel or persons aboard, shall render all practical and necessary assistance to persons affected by the collision, accident, or casualty to save them from danger caused by the incident. Under no circumstances may the rendering of assistance or other compliance with this section be evidence of the liability of such operator for the collision, accident or casualty. The operator shall also give his or her name, address, and the identification of the operator's vessel to any duly authorized law enforcement officer of the Band or the State of Minnesota and any person injured and to the owner of any property damaged: provided, that this requirement shall not apply to operators of vessels when they are participating in an organized competitive event covered by a permit issued by any lawful jurisdiction. These duties are in addition to any duties otherwise imposed by federal or state law.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.V, § 1.

§ 314. Immunity from Liability of Persons Rendering Assistance.

Any person who complies with 20 MLBS § 313 or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty, without objection of the person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance, where the assisting person acts as any reasonably prudent person would have acted under the same similar circumstances.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T. V, § 2.

§ 315. Penalty.

Any violation of the provisions of 20 MLBS §§ 301-312 shall be subject to penalties imposed in 20 MLBS §§ 401 and 402.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.IV, § 10.

CHAPTER 5

ENFORCEMENT

Section

- 401. Criminal Penalties.**
- 402. Civil Penalties.**
- 403. Criminal Violations as Evidence in Civil Actions.**
- 404. Injunctive Relief.**
- 405. Enforcement Authority.**
- 406. Notice in lieu of Summons.**
- 407. Termination of Unsafe Use of Vessel.**

Cross References

Disposition of monies collected, *see* 20 MLBS § 12.

§ 401. Criminal Penalties.

Any person subject to the jurisdiction of this title who violates the prohibitory provisions of 20 MLBS §§ 306, 307, or 313 or any regulations issued thereunder shall be fined not more than \$5,000 for each violation and imprisoned not more than one year or both.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.VI, § 1.

Cross References

Regulation of watercraft, *see* 20 MLBS § 301.

§ 402. Civil Penalties.

- (a) In addition to any other penalty prescribed by law any person subject to the jurisdiction of this title who violates any provision of this title shall be liable to a civil penalty of not more than \$2,000 for each violation except that the maximum civil penalty shall not exceed \$5,000 for any related series of violations.

- (b) In addition to any other penalty prescribed in subsection (a), any person subject to the jurisdiction of this title who is guilty of gross neglect in violating any provision of this title or the regulations issued thereunder shall be liable for compensatory damages to the injured party under the civil code of the Band. If the violation further involves the grossly negligent use of a vessel, the vessel except as what may be exempt pursuant to federal law, shall be liable and may be proceeded against in the Court of Central Jurisdiction pursuant to federal forfeiture proceedings (28 U.S.C. 2461 et seq.) Which are herewith incorporated by reference.

Historical and Statutory Notes

Source:

Band Statute 1 1 30-MLC-51, T.VI, § 2.

Cross References

Damages, *see* 24 MLBS § 651.

Regulation of watercraft, *see* 20 MLBS § 301.

§ 403. Criminal Violations as Evidence in Civil Actions.

Violations as evidence in civil actions by any of the parties thereto shall not be negligence *per se*, but shall be *prima facie* evidence of negligence. The record of conviction for criminal violations of 20 MLBS §§ 301-305 and 308-312 shall be admissible as evidence in civil actions in the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, TV, § 5.

§ 404. Injunctive Relief.

The Court of Central Jurisdiction shall have jurisdiction to restrain violations of this title upon petition brought on behalf of the Non-Removable Mille Lacs Band of Chippewa Indians. Whenever practical, the Commissioner of Natural Resources shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and except in the case of knowing and willful violation, shall afford him a reasonable opportunity to achieve compliance. The failure to give notice and afford such opportunity does not preclude the granting of appropriate relief.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.VI, § 3.

§ 405. Enforcement Authority.

- (a) Any duly authorized law enforcement officer or Natural Resource officer of the Mille Lacs Band may enforce the provisions of this title.
- (b) Any duly authorized law enforcement or Natural Resource officer shall have the authority to inspect any vessel registered with the Non-Removable Mille Lacs Band of Chippewa Indians for the purpose of inspecting the title and registration of the vessel and its mandatory safety features.
- (c) Any duly authorized law enforcement or Natural Resource officer of the Mille Lacs Band is hereby authorized and empowered to enter upon any trust land subject to the jurisdiction of the Band or the contiguous waters to said land for the purpose of carrying out the duties and functions of his office, or to make investigations of any violation of the provisions of this title, and in aid thereof to take affidavits upon oath administered by him, and to cause proceedings to be instituted if proof at hand warrants it.
- (d)
 - (1) Any duly authorized law enforcement officer or Natural Resource officer of the Mille Lacs Band is hereby authorized and empowered to seize and confiscate in the name of the Band any substance described in 19 MLBS §406 or 23 MLBS § 1(a) or 7 which is possessed in any vessel operated on the waters subject to the jurisdiction of this title in violation of the appropriate section of this title. Anything seized or confiscated shall be held by the chief law enforcement officer until proper final determination of the case by the Court of Central Jurisdiction.
 - (2) Any duly authorized law enforcement officer or Natural Resource officer of the Mille Lacs Band is hereby authorized and empowered to seize and confiscate in the name of the Band, any vessel in which substances described in 19 MLBS §406 or 23 MLBS §1(a) or 7 are found. Any vessel so seized impounded or confiscated shall be held by the chief law enforcement officer until proper final determination of the case by the Court of Central Jurisdiction. It shall be the responsibility of the record owner of the vehicle to pay for all costs associated with any seizure, confiscation or impoundment action initiated by a duly authorized officer of the Band in the performance of his lawful duty. The Non-Removable Mille Lacs Band of Chippewa Indians, any of its officers agents and employees, shall not be liable for damages to any vessel so seized confiscated or impounded.
- (e) Any duly authorized law enforcement officer or Natural Resource officer of the Mille Lacs Band may arrest without warrant any person subject to the jurisdiction of this title detected in the actual violation of any provision of this chapter of law and to take such person before the Court of Central Jurisdiction and make a proper complaint.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.VI, §4.

Cross References

Hindrance, resistance or obstruction of officer, *see* 20 MLBS §311.

Unreasonable searches and seizures, *see* 1 MLBS § 2.

Warrant, summons and arrest, *see* 24 MLBS § 4101.

§ 406. Notice in lieu of Summons.

- (a) When a person subject to the jurisdiction of this title is arrested for any violation of law which is punishable as a misdemeanor and is not taken into custody and immediately taken before the court, the arresting officer shall prepare in quadruplicate, written notice to appear before the court. This notice has the effect of, and serves as a summons and short form complaint. Said notice shall conform with applicable provisions of the United States Government, United States Department of Interior, Title 25 - Indians.
- (b) In order to secure release, without being taken into custody and immediately taken before the court, the arrested person must give his written promise so to appear before the court by signing, in quadruplicate, a written notice prepared by the arresting officer. The officer shall retain the original of the notice and deliver the copy thereof marked "Summons" to the person arrested. Thereupon the officer shall release the person from custody.
- (c) If the person so summoned fails to appear on the return day, the court shall issue a warrant for his/her arrest, and upon his/her arrest proceedings shall be had as in any other case.
- (d) In the event that a person so arrested refuses to sign in quadruplicate a written notice prepared by the arresting officer, the arresting officer shall immediately take such person before any justice of the Court of Central Jurisdiction and make a proper complaint.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.VI, § 5.

Cross References

Warrant, summons and arrest, *see* 24 MLBS § 4101.

§ 407. Termination of Unsafe Use of Vessel.

If a duly authorized law enforcement or Natural Resource officer of the Mille Lacs Band observes a boat being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition as defined in the regulations of the Commissioner of Natural Resources, and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring and to remain there until the situation creating the hazard is corrected or ended.

Historical and Statutory Notes

Source:

Band Statute 1130-MLC-51, T.VI, § 6.

Cross References

Life preservers or life floats, *see* 20 MLBS § 305.

TITLE 21 – REAL AND PERSONAL PROPERTY

<u>Chapter</u>	<u>Section</u>
1. General Provisions	1
2. Land Consolidation	101
3. Easements and Leases	201
4. Forcible Entry and Unlawful Detainer	301
5. Real Estate Mortgages	401
6. Recovery of Possession of Personal Property	501

CHAPTER 1

GENERAL PROVISIONS

Section

- 1. Findings and Determinations.**
- 2. Reservation of Right of Amendment.**
- 3. Jurisdiction for the Court of Central Jurisdiction.**
- 4. Transfers and Changes of Venue.**
- 5. Fees.**

6. Non-Removable Mille Lacs Band of Chippewa Indians may be made Defendant in Certain Cases.

Historical and Statutory Notes

The Preamble to Band Statute 1087-MLC-40 provides: "It is enacted, a code for the provision of legal remedies for the recovery of real and personal property unlawfully held by person subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians when said property is located on territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians."

Band Statute 1087-MLC-40, § 64 provides: "Section 64. Severability. If any provisions of this Band Statute, or the application thereof, to any person, business or corporation or circumstance is held invalid, the invalidity shall not affect any other provision or applications of this Band Statute which can be given effect without the invalid provisions, or application and to this end the provisions of this Band Statute are declared severable."

§ 1. Findings and Determinations.

- (a) The Band Assembly hereby finds that enrolled members of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians have entered into contractual arrangements for the provision of securing adequate housing on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians from the Minnesota Chippewa Tribal Home Loan Program; and that said houses were constructed with funds available from the Home Loan Program on lands under this Band's jurisdiction; and, that said Band members subsequently became delinquent on their payments, which created a legal cause of action for the Home Loan Program to recover possession of said houses; and that to the detriment of self-government by the people of the Non-Removable Mille Lacs Band of Chippewa Indians, the Home Loan Program sought relief from an exterior court which infringed upon the sovereign rights of the Non-Removable Mille Lacs Band of Chippewa Indians.
- (b) The Band Assembly hereby finds and determines that it is in the best interest of the Non-Removable Mille Lacs Band of Chippewa Indians that such contractual disputes clearly threaten the political integrity, economic security and welfare of the Band if they are not adjudicated in the Court of Central Jurisdiction.
- (c) The Band Assembly hereby finds and determines that the Non-Removable Mille Lacs Band of Chippewa Indians has never waived any sovereign immunities with regard to the provision of housing units on territories under the jurisdiction of the Band to any exterior court of competent jurisdiction and is now and hereafter precluded from such a waiver of the sovereign powers of the peoples of the constituent Bands on housing issues.
- (d) The Band Assembly hereby finds and determines that it is necessary to establish fair and impartial legal remedies in the Court of Central Jurisdiction for persons or corporations to seek the recovery of property, real or otherwise, which is alleged to be

in possession of a person subject to the jurisdiction of the Band on territories under the jurisdiction of the Band. To this end, this title shall be liberally construed so as to effectuate the purposes which gave rise to it.

- (e) The Band Assembly hereby finds and determines that residential dwellings, newly constructed or remodeled on or within lands under the jurisdiction of the Band are real property subject to foreclosure actions outlined in this title in the event that default conditions of the loan exist.
- (f) The Band Assembly hereby finds and determines that any interest in allotments located within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians which is to escheat should escheat for the benefit of the Non-Removable Mille Lacs Band of Chippewa Indians rather than any other governmental entity, and that such provisions of law protect the political, social, general welfare and economic integrity of this Band.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § I.

§ 2. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend or repeal the provisions of this title, and all rights and privileges granted or extended hereunder, shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 65.

§ 3. Jurisdiction for the Court of Central Jurisdiction.

The Court of Central Jurisdiction is hereby conferred exclusive subject matter jurisdiction to resolve disputes over the possession of property, real or otherwise, held by an enrolled member of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, any Indian from any other Band or Tribe or any person, through marriage or otherwise, who resides on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 2.

Cross References

Subject matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 4. Magistrate Jurisdiction.

The Associate Justices of the Court of Central Jurisdiction shall have original and exclusive jurisdiction over civil causes of action arising in their Districts pursuant to chapters 1, 2 and 4 to 6 of this title. They shall perform their duties pursuant to chapters 1, 2 and 4 to 6 of this title under the title of Magistrate.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 2.02.

Cross References

Subject matter jurisdiction, Court of General Jurisdiction, *see* 5 MLBS § 111.

§ 4. Transfers and Changes of Venue.

The Court of Central Jurisdiction shall accept all changes of venue and transfers from any other court of competent jurisdiction in any state on the island of the United States of America, if it involves property located on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 2.03.

§ 5. Fees.

The Court shall have the power to establish reasonable fees for the costs of services for legal remedies for possession of property. Such fees may be reduced or waived in cases of undue hardships, in which event they shall become a charge to the Court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 2.01.

§6. Non-Removable Mille Lacs Band of Chippewa Indians may be made Defendant in Certain Cases.

In all cases not otherwise provided for, the consent of the Non-Removable Mille Lacs Band of Chippewa Indians is given to be named a party in any suit which is now pending or which may hereafter be brought in the Court of Central Jurisdiction having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real estate or personal property, for the purpose of securing an adjudication touching any mortgage, or other lien the Non-Removable Mille Lacs Band of Chippewa Indians may have or claim on the real estate or personal property involved, or to determine the boundary line between any real property of the Band and real property contiguous thereto; provided, that this shall not be deemed to supersede any express provision of law relating to action to which the Band may be made a party, nor to relieve any person from complying with any requirement of such laws.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 59.

Cross References

Liberal construction of this section, *see* 21 MLBS § 404.

CHAPTER 2

LAND CONSOLIDATION

Section

- 101. Non-members and non-Indians Prohibited from Receiving Interests in Trust or Restricted Lands.**
- 102. Life Estate in Spouse or Children.**
- 103. Escheat.**
- 104. Federal Law and Regulations.**

§ 101. Nonmembers and Non-Indians Prohibited from Receiving Interests in Trust or Restricted Lands.

Pursuant to the authority vested in the Non-Removable Mille Lacs Band of Chippewa Indians by the Indians Land Consolidation Act, 25 United States Code, 220 1 , et seq., 1983 , the Commissioner of Natural Resources is hereby authorized and directed to prepare a plan, subject to the approval of the Secretary of Interior and ratified by the Band Assembly, to ensure that nonmembers or non-Indians of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, shall not receive or be entitled to receive by devise or descent any interest of an enrolled member of any constituent Band of the Non-Removable Mille Lacs Band of

Chippewa Indians on any lands located within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. Notwithstanding any other provision of any other law, it shall be unlawful for any non-member or non-Indian of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians to receive or be entitled to receive any interest in trust or restricted lands within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 67.

§ 102. Life Estate in Spouse or Children.

Any enrolled member of the Non-Removable Mille Lacs Band of Chippewa Indians who dies intestate leaving a surviving spouse and/or children who are nonmembers of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, or who are non-Indians, the surviving spouse or children shall be entitled to life-time estate on the trust or restricted property of the decedent Band member in lieu of the restriction imposed in 21 MLBS § 101 provided, that any said surviving spouse or children not be excluded or removed from said lands for cause after hearing pursuant to 2 MLBS § 201.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 67.01.

§ 103. Escheat.

In the event of death of an enrolled member of any constituent member Band of the Non-Removable Mille Lacs Band of Chippewa Indians, with said death be intestate and without a legitimate heir to whom interests in trust or restricted lands may pass, all such interests shall escheat to the Non-Removable Mille Lacs Band of Chippewa Indians subject to:

(a)

- (1) Right of proper notice of intent to take and notice of due process hearing in the Court of Central Jurisdiction to determine the legal membership status of the subject heir,
- (2) A specific finding of the Court that the subject heir is not eligible to receive an interest in the trust or restricted property,
- (3) A specific finding if the subject heir is entitled to compensation for the legal taking of the interest by the Non-Removable Mille Lacs Band of Chippewa

Indians, any said compensation may include any rental fees established for lifetime occupancy,

- (4) A specific finding of the amount of compensation due to the subject heir and
 - (5) An order for payment of said compensation in an amount reasonable and appropriate not to exceed five hundred dollars by the Non-Removable Mille Lacs Band of Chippewa Indians.
- (b) Right to appeal the decision of the justice to the entire Court of Central Jurisdiction whose decision shall be final.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 67.02.

§ 104. Federal Law and Regulations.

The provisions of Title II of Public Law 97-459, 96 Stat. 2515 as amended by Public Law 98-608, 98 Stat. 3171, as well as any and all implementing regulations promulgated by the Secretary of Interior and published in the Federal Register shall apply as law of the Non-Removable Mille Lacs Band of Chippewa Indians in the same manner as if such had been enacted into law pursuant to 3 MLBS § 16. The justices of the Court of Central Jurisdiction shall have exclusive jurisdiction in matter related to this chapter and each shall be bound thereby to the applicable provisions of the laws of the United States of America. 125 U.S.C.A. § 2201 et seq.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 67.03.

CHAPTER 3

EASEMENTS AND LEASES

Section

- 201. Validity of Easements.**
- 202. Easements Over Individual Trust Land.**
- 203. Authority of Commissioner of Natural Resources.**
- 204. Application for Easement.**
- 205. Unauthorized Easements; Penalty.**
- 206. Trespass.**
- 207. Seizure of Vehicles, Equipment or Goods used in Trespass.**

208. Leases of Restricted Land under the Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

The Preamble to 1098-MLC-48 provides: "The Band Assembly hereby creates Chapter 48 of the Statutes of the Non-Removable Mille Lacs Band of Chippewa Indians for the purpose of exercising jurisdiction over the use of all lands owned in fee or trust status and all trust lands to which the Band is designated as a legal beneficiary of a trust relationship between the Band and the United States of America."

§ 201. Validity of Easements.

All easements of records over trust land, on trust land and under trust land within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall have no validity or force of law unless approved upon the recommendation of the Chief Executive, ratified pursuant to formal resolution by the Band Assembly and approved and filed by the U.S. Department of Interior, Bureau of Indian Affairs. All existing easements are hereby declared null and void unless entered into in compliance with Federal Statute and Regulation.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 1.

§ 202. Easements Over Individual Trust Land.

The provisions of this chapter shall not be construed as applicable for obtaining easements over individual trust land.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 1.01.

§ 203. Authority of Commissioner of Natural Resources.

The Commissioner of Natural Resources is hereby authorized and directed to review each parcel of land under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians to determine the validity of all easements of record. Should he determine any easement to be invalid, he shall notify in writing the holder of the easement of said invalidity and the United States Department of Interior-Bureau of Indians Affairs for appropriate action pursuant to federal law.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 2.

§ 204. Application for Easement.

All persons who reside on or hold leases to trust or restricted property under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall be authorized to initiate action which will result in the issuance of a valid easement for purposes of obtaining public utility services including electrical service, telephone service, and water and sewer service. Upon obtaining the consent of the lessee, all requests for easements shall be forwarded to the Commissioner of Natural Resources who shall make a determination of the issues and make his recommendation for acceptance or rejection to the Chief Executive. Upon the authorization of the Chief Executive, he shall forward said application for easement to the District Representative of the Band Assembly in which the land is located for formal acceptance or rejection of the easement by the Band Assembly. In the event the Band Assembly consents to grant the easement, the easement shall be forwarded to the Superintendent of the Minnesota Agency-Bureau of Indian Affairs for proper action pursuant to federal law. In the event that the Band Assembly rejects said easement, the Solicitor General shall notify the lessee of said action and the right of the lessee to a hearing before the Band Assembly to contest the rejection. Any lessee who seeks to appeal the decision of the Band Assembly shall petition the Speaker of the Assembly within ten days after formal action or forfeit all rights to appeal. The decision of the Band Assembly may be appealed to the Court of Central Jurisdiction but any such appeal must be instituted within five days after the decision of the Band Assembly is rendered or the right of appeal to the Court shall be forfeited.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 2.01.

§ 205. Unauthorized Easements; Penalty.

Any holder of a valid lease of trust or restricted property or any person who resides or intends to reside on trust or restricted property under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, who shall offer or authorize through signature any easement in violation of 21 MLBS § 204 to any other person or entity shall be deemed guilty of an unauthorized easement on trust land violation and upon conviction thereof, shall be sentenced to pay a fine not to exceed five hundred dollars.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 2.02.

§ 206. Trespass.

Any person who shall go upon or pass over any trust or restricted lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians in violation of any provisions of this or any other law of the Mille Lacs Band of Chippewa Indians shall be deemed guilty of a trespass violation and upon conviction thereof, shall be subject to exclusion for a period not to exceed 180 days and/or a fine not to exceed five hundred dollars.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 2.03.

Cross References

Exclusion, *see* 2 MLBS, § 201.

§ 207. Seizure of Vehicles, Equipment or Goods Used in Trespass.

The Commissioner of Natural Resources or any law enforcement official of the Band at the time the trespass occurs shall be authorized to seize any motorized vehicles, equipment and material goods, used in connection with the trespass in the name of the Band to be returned at the discretion of the Court at any time during the judicial proceeding.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § .2.04.

Cross References

Unreasonable searches and seizures, *see* 1 MLBS § 2.

§ 208. Leases of Restricted Lands Under the Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Leases of trust or restricted lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians or from Band member employees of the Mille Lacs Band must be made on sealed bids unless the Chief Executive upon ratification by the Band Assembly waives this requirement on the basis of a full report showing: the need for the transaction, the benefits accruing to both parties and that the consideration for the proposed transaction shall be not less than the appraised value of the lands or leasehold interest unless the Indian employee qualifies and is intending a transaction in accordance with this chapter. An affidavit as follows shall accompany each proposed land transaction:

I, _____(name), _____(title), swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 3.

Cross References

Water conservation measures, building permits for leased lands, *see* Nat. Res. Comm. Order 112-89.

CHAPTER 4

FORCIBLE ENTRY AND UNLAWFUL DETAINER

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	301
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SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 301. Recovery of Premises.
- 302. Limitation of Actions.
- 303. Complaint and Summons.
- 304. Answer and Hearing.
- 305. Adjournment.
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Cross References

Dissolution or modification of unlawfully ousted tenant's order for possession, *see* 21 MLBS § 349.

§ 301. Recovery of Premises.

- (a) No person shall make entry into lands or tenements except in cases where his entry is allowed by law and in such cases he shall not enter by force but only in a peaceable manner.
- (b) When any person has made unlawful or forcible entry into lands or tenements and detains the same, or having peaceably entered, unlawfully detains the same, the person entitled to the premises may recover possession thereof in the manner hereinafter provided.
- (c)
 - (1) When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage an expiration of the time for redemption or after termination of contract to convey the same, or after termination of the time for which they are demised or let to him or to the persons under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination or any such estate by notice to quit, in all such cases the person entitled to the premises any recover possession thereof, in the manner hereinafter provided.
 - (2)
 - (i) It shall be a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that:
 - (A) The alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, or under the laws of the Non-Removable Mille Lacs Band of Chippewa Indians.
 - (B) The alleged termination was intended in whole or part as a penalty for the defendant's report to a governmental authority of the plaintiff's violation of any health, safety, housing or building codes or ordinances.
 - (ii) If the notice to quit was served within ninety days of the date of any act of the tenant coming within the terms of clause (A) or (B) of subparagraph (i) the burden of proving that the notice to quit was not served in whole or part for the retaliatory purpose shall rest with the plaintiff.

- (3) In any proceeding for the restitution of premises upon the ground of nonpayment of rent, it shall be a defense thereto, if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any lawful act of the tenant as described in § 301 (c)(2)(i)(B), providing that the tenant tender to the Court or to the plaintiff the amount of rent due and payable under his original obligation.
- (d) Nothing contained herein shall limit the right of the lessor pursuant to the provisions of § 301 (c)(2)(i)(B), to terminate a tenancy for a violation by the tenant of a lawful, material provision of a lease or contract, whether written or oral, or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under his direction or control.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.

Cross References

Additional remedy for tenants, *see* 21 MLBS § 341.

§ 302. Limitation of Actions.

No restitution shall be made under this chapter of any lands or tenements of which the part complained of, or his ancestor, or those under whom he hold the premises, have been in quiet possession for three years next before the filing of the complaint, after the determination of the leasehold estate that he may have had therein.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.03.

§ 303. Complaint and Summons.

The person complaining shall file a complaint with a Magistrate describing the premises of which possession is claimed, stating the facts which authorize the recovery and praying for restitution thereof. The Magistrate shall thereupon issue a summons, commanding the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three, nor more than ten days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached and that the original has been filed. All summons shall be served in accordance with 24 MLBS § 2001 et seq.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.04.

§ 304. Answer and Hearing.

After the return of the summons at the time and place appointed therein, if the defendant appeared, he may answer the complaint and all matters in excuse, justification or avoidance of the allegations thereof, shall be set up in the answer and thereupon, the Magistrate shall hear and determine the action, unless he shall adjourn the trial as provided in 21 MLBS § 305, but either party may demand a trial by jury. The proceedings in such action shall be the same as in other civil actions in a Magistrate's Court, except as in this chapter, otherwise provided.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.05.

§ 305. Adjournment.

The Magistrate, in his discretion, may adjourn the trial, but not beyond six days after the return day, unless by consent of parties; but in all cases mentioned in 21 MLBS § 301, except in an action upon a written lease signed by both parties thereto, if the defendant, his agent or attorney shall make oath that he cannot safely proceed to trial for want of a material witness, naming him and that he has made due exertion to obtain the witness and believes that, if such adjournment be allowed, he will be able to procure the attendance of such witness at the trial or his deposition and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency of the action and all costs and damages consequent upon such adjournment, the Magistrate shall adjourn the trial for such time as may appear necessary, not exceeding three months.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.06.

§ 306. Judgment, Execution, and Writ of Restitution.

- (a) If upon the trial, the Magistrate or jury find for the plaintiff, the Magistrate shall immediately thereupon, enter judgment that the plaintiff have restitution of the premises and tax the cost for him. The Magistrate shall issue execution in favor of the plaintiff for such costs and also immediately issue a writ of restitution. No stay of the writ of restitution may be granted except upon a showing by the defendant that the restitution would work a substantial hardship upon the defendant. Upon a proper

showing by the defendant of substantial hardship, the Magistrate may stay the writ of restitution for a reasonable period not to exceed seven days, except that no stay of the writ of restitution shall extend later than three days prior to the date the rent is next due. If the Magistrate or jury shall find for the defendant, he shall enter judgment for the defendant, tax the costs against the plaintiff and issue execution therefore.

- (b) No personal property shall be seized after entry of any judgment, by any law enforcement officer of the Band, or any other person, if said seizure involves a basic life-sustaining item required for the general welfare of any person under the jurisdiction of the Band between November 1-April 15, of any year.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, §§ 6.07, 6.10.

Cross References

Petition, unlawful removal or exclusion of tenant, *see* 21 MLBS § 345.

307. Failure to Reach a Verdict.

If the jury cannot agree upon a verdict, the Magistrate may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties or fixed by the justice for the purpose of impaneling a new jury.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.08.

§ 308. Notice of Appeal.

If the party against whom judgment for restitution is rendered or his attorney state to the Magistrate that he intends to take an appeal, a writ of restitution shall not issue for 72 hours after judgment. In an action on a lease, against a tenant holding over after the expiration of the term thereof, or a termination thereof, by a notice to quit, such writ may issue forthwith notwithstanding such notice of appeal, if the plaintiff give a bond conditioned to pay all costs and damages in case on the appeal the judgment of restitution be reversed and a new trial ordered.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.09.

§ 309. Appeals.

If either party feels aggrieved by the judgment he may appeal within ten days as in other cases triable before Magistrates except that if the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of such appeal and abide the order the Court may make therein and pay all rents and other damages justly accruing to the part excluded from possession during the pendency of the appeal. Upon the taking of such appeal all further proceedings in the case shall be stayed, except that in an action on a lease against a tenant holding over after the expiration of the term thereof, or termination thereof, by notice to quit, if the plaintiff give bond as provided in 21 MLBS § 308, a writ of restitution shall issue as if no appeal had been taken and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered in such court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.10.

§ 310. Form of Verdict or Finding.

The verdict of the jury or the finding of the Court in favor of the Plaintiff in an action under this Chapter shall be substantially in the following form:

At Court held at _____, on the _____ day of _____, 19____, before _____, a _____ Magistrate in and for the County of _____, in an action between _____ Plaintiff, and _____ Defendant, the jury (or, if the action be tried without a jury, the Court) find that the facts alleged in the complaint are true, and the said Plaintiff ought to have restitution of the premises therein described without delay. If the verdict or finding be for the Defendant, it shall be sufficient to find that the facts alleged in the complaint are not true.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.11.

§ 311. Form of Summons and Writ of Restitution.

The summons and writ of restitution may be substantially in the following form:

FORM OF SUMMONS

Non-Removable Mille Lacs Band of Chippewa Indians

) ss.

District of _____)

Whereas, _____ of _____, hath filed with the undersigned, a Magistrate in and for said District, a complaint against _____, of _____, a copy whereof is hereto attached; Therefore, you are hereby summoned to appear before the undersigned on the _____ day of _____, 19____, at __ o'clock __m, at _____, then and there to make answer to and defend against the complaint aforesaid, and further to be dealt with according to law.

Dated at _____, this _____ day of _____ 19 _____.

Magistrate

[FORM OF WRIT OF RESTITUTION]

Non-Removable Mille Lacs Band of Chippewa Indians

) Ss

District of _____

The Non-Removable Mille Lacs Band of Chippewa Indians to any law enforcement officer of the Band aforesaid:

Whereas, _____, Plaintiff, of _____, in an action for an unlawful or forcible entry and detainer (or for an unlawful detainer, as the case may be) at a Court held at _____, in the District aforesaid, on the _____ day of _____, 19 _____, before _____, a Magistrate in and for said District, by the consideration of the Court recovered a judgment against _____, of _____, to have restitution of (here described the premises as in the complaint).

Therefore, you are hereby commanded that, taking with you the force of the District, if necessary, you cause the said _____ to be immediately removed from the aforesaid premises and the said _____ to have peaceable restitution of the same. You are also hereby commanded that of the goods and chattel of the said _____ with said District you cause to be levied, and the same being disposed of according to law, to be paid to the said _____ the sum of _____ dollars, being the costs taxed against the said _____ for the said _____ at the Court aforesaid together with \$1.00 for this writ; and thereof, together with this writ, make due return within thirty days from the date hereof, according to law.

Dated at _____, this _____ day of _____ 19 _____.

Magistrate

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, §§ 6.12, 6.13.

§ 312. Execution of Writ of Restitution.

The officer holding the writ of restitution shall execute the same by making a demand upon defendant if he can be found in the District or any adult member of his family holding possession of the premises, or other person in charge thereof, for the possession of the same and that the defendant remove himself, his family and all of his personal property from such premises within 24 hours after such demand. If defendant fail to comply with the demand, then the officer shall take with him necessary, the force of the District and whatever assistance may be necessary, at the cost of the complainant, remove the said defendant, his family and all his personal property from said premises detained, immediately and place the plaintiff in the possession thereof. In case defendant cannot be found in the District, and there is no person in charge of the premises detained, so that no demand can be made upon the defendant, then the officer shall enter into the possession of the premises, breaking in if necessary and remove all property of the defendant at the expense of the plaintiff. The plaintiff shall have a lien upon all of the goods upon the premises for the reasonable costs and expenses incurred for removing the personal property and for the proper caring and storing the same and the costs of transportation of the same to some suitable place of storage, in case defendant shall fail or refuse to make immediate payment for all the expenses of such removal from the premises and plaintiff shall have the right to enforce such lien by detaining the same until paid, and in case of non-payment for 60 days after the execution of the writ, shall have the right to enforce his lien and foreclose the same by public sale as provided for in case of sales.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.14.

Cross References

Additional remedy for tenants, *see* 21 MLBS § 341.

Petition, unlawful removal or exclusion of tenant, *see* 21 MLBS § 345.

SUBCHAPTER 2

UNLAWFUL REMOVAL OR EXCLUSION: RECOVERY OF POSSESSION

Section

- 341. Additional Remedy for Tenants.**
- 342. Application to Tenants Restricted.**
- 343. Public Policy of the Band.**
- 344. Manner of Recovering Possession.**
- 345. Petition.**
- 346. Order.**
- 347. Security for Costs and Damages.**
- 348. Execution of Order.**

349. Dissolution or Modification of Order.

350. Appeal of Order for Recovery.

§ 341. Additional Remedy for Tenants.

The purpose of this subchapter is to provide an additional and summary remedy for tenants unlawfully removed or excluded from rental property and except as where expressly provided in this subchapter 21 MLBS §301 or 312 shall not apply to proceedings under this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 11.

§ 342. Application to Tenants Restricted.

The provisions of this subchapter shall apply only to tenants as that term is defined in 21 MLBS § 372(e) and buildings as that terms is defined in 21 MLBS § 372(a).

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 12.

§ 343. Public Policy of the Band.

Any provision, whether oral or written, of any lease or other agreement whereby any provision of this subchapter is waived by a tenant is contrary to public policy and void.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 10.

§ 344. Manner of Recovering Possession.

Any tenant who is unlawfully removed or excluded from lands or tenements which are demised or let to him may recover possession of the premises in the manner described in this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 7.

§ 345. Petition.

The tenant shall present a verified petition to the Court of Central Jurisdiction in which the premises are located, which petition shall:

- (a) Describe the premises of which possession is claimed and the owner as defined in 21 MLBS § 372(c), of the premises.
- (b) Specifically state the facts and grounds that demonstrate that the removal or exclusion was unlawful including a statement that no judgment and writ of restitution have been issued under 21 MLBS § 306 in favor of the owner and against petitioner as to the premises and executed in accordance with 21 MLBS § 312.
- (c) Ask for possession thereof.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, §7.01.

§ 346. Order.

If it clearly appears from the specific grounds and facts stated in the verified petition or by separate affidavit of petitioner or his counsel or agent that the removal or exclusion was unlawful, the Court shall immediately order that petitioner have possession of the premises.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 7.02.

§ 347. Security for Costs and Damages.

The petitioner shall furnish monetary or other security if any as the Court deems appropriate under the circumstances for payment of all costs and damages the defendant may sustain if the order is subsequently found to have been obtained wrongfully. In determining the appropriateness of any security the Court shall consider petitioner's ability to afford monetary security.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 7.03.

§ 348. Execution of Order.

The Court shall direct the order to the chief law enforcement officer in which the premises is located and the chief law enforcement officer shall execute the order immediately by making a demand upon the defendant, if he can be found, or his agent or other person in charge of the premises, for possession of premises. If the defendant fails to comply with the demand, the officer shall take with him whatever assistance may be necessary and immediately place the petitioner in possession of the premises. If the defendant or his agent or other person in control of the premises cannot be found and if there is no person in charge of the premises detained so that no demand can be made, the officer shall immediately enter into possession of the premises and place the petitioner in possession of the premises. The officer shall also serve the order and verified petition or affidavit without delay upon the defendant or upon his agent, in the same manner as a summons is required to be served in a civil action in the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 7.04.

§ 349. Dissolution or Modification of Order.

The defendant by written motion and notice served by mail or personally upon petitioner or his attorney at least two days prior to the hearing date on the motion may obtain dissolution or modification of the order for possession, issued pursuant to 21 MLBS § 346 unless the petitioner proves the facts and grounds upon which the writ is issued. A defendant bringing a motion pursuant to this section may recover possession of the premises only in accordance with 21 MLBS § 301 or otherwise provided by law. Upon the dissolution of the order, the Court shall tax costs to petitioner, subject to the provisions of 21 MLBS § 306 and may allow damages and reasonable attorney's fees for the wrongful granting of the order for possession. If the order is affirmed the Court shall tax costs against defendant and may allow petitioner reasonable attorney's fees.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 8.

§ 350. Appeal of Order for Recovery.

An order issued under 21 MLBS § 346 or affirmed, modified or dissolved under 21 MLBS § 349 is a final order for purposes of appeal and either party aggrieved by the order may appeal within ten days after the entry of the order. If the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of the appeal, to abide by the order the Court may

make and to pay all rent and other damages justly accruing to the party excluded from possession during the pendency of the appeal.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, §9.

SUBCHAPTER 3

ADDITIONAL REMEDIES

Section

371. Purpose to Provide Additional Remedies.

372. Definitions.

373. Proceedings by Owner Limited.

374. Owner's Right to Collect Rent Suspended.

§ 371. Purpose to Provide Additional Remedies.

The purpose of this section and 21 MLBS §§ 372 and 373 is to provide additional remedies and nothing herein contained shall alter the ultimate financial liability of the owner or tenant for repairs or maintenance of any building located on lands under the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 15.

§ 372. Definitions.

As used in this section and 21 MLBS §§ 371 and 373, the terms in this section shall have the meanings assigned to them:

- (a) **"Building"** means any building used in whole or in part as a dwelling, including single family homes, multiple family units, such as apartments or structures containing both dwelling units and units used for non-dwelling purposes.
- (b) **"Commercial Tenant"** means any person paying rent in a building who is not a tenant.
- (c) **"Owner"** means the owner or owners of the freehold of the premises or lesser estate therein, contract vendee, receiver, executor, trustee, lessee, agent or any other person,

firm or corporation directly or indirectly in control of a building subject to the provisions of 21 MLBS §§ 371 to 373.

- (d) **"Person"** means a natural Indian person, corporation, partnership or unincorporated association.
- (e) **"Tenant"** means any person who is occupying a dwelling in a building under any agreement, lease or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys as rent for the use of the dwelling unit, and all other regular occupants of such dwelling unit.
- (f) **"Violation"** means:
 - (1) A violation of any state, county or city health, safety, housing building, fire prevention or housing maintenance code applicable to the building.
 - (2) A violation that the premises and all common areas are fit for the use intended by the parties or to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious or irresponsible conduct of the lessee or licensee or a person under his direction or control.
 - (3) A violation of an oral or written agreement, lease or contract for the rental of a dwelling in a building.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 16.

§ 373. Proceedings by Owner Limited.

A tenant may not be evicted nor may his obligations under his rental agreement be increased nor the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the tenant's complaint of a violation. The burden of proving otherwise shall be on the owner if said eviction or increase of obligations or decrease of services occurs within ninety days after the filing of the complaint, unless it is found that the complaint was not made in good faith. After ninety days the burden of proof shall be on the tenant.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 14.

§ 374. Owner's Right to Collect Rent Suspended.

When the Court appoints the Secretary of Treasury as an administrator, any right of the owner to rent moneys from the time of judgment or service of judgment shall be void and unenforceable until the administration is terminated by the Court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 13.

CHAPTER 5

REAL ESTATE MORTGAGES

<u>Subchapter</u>	<u>Section</u>
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SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 401. Pledge of Allotted Lands as Collateral.
- 402. Relinquishment of Title to Residence.
- 403. Minnesota Chippewa Tribal Housing Corporation Contracts; Validity of Mortgages.
- 404. Construction.
- 405. Presumption of Identity.
- 406. Limitation On Foreclosure.
- 407. Holder of Junior Mortgage May Pay Default in Prior Mortgage.
- 408. Reinstatement of Mortgage.
- 409. Purchaser at Foreclosure, Execution, Or Judicial Sale May Pay Taxes, Assessments, Insurance Premiums or Interest.
- 410. Attorney's Fees.

§ 401. Pledge of Allotted Lands as Collateral.

- (a) Any enrolled member of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians who shall be an allottee of lands held in trust by the United States of America, which said lands are located within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall not be required to pledge

the entire acreage of the allotment as collateral to obtain financial assistance for the construction or renovation of any residential or commercial dwelling located on said allotment from any mortgage creditor of financial institution.

- (b) Notwithstanding the provisions of subsection (a), any pledge of an allotment as collateral for the construction or renovation of any residential dwelling shall not exceed two acres of the total allotment when the total exceeds two acres of land.
- (c) The provisions of this section shall apply to all allotments held by an enrolled member of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians in trust by the United States of America on January 1, 1975. Any such pledge of an entire acreage of an allotment to secure credit for the construction or renovation of any residential dwelling shall be of no force and effect in the event such pledge exceeds the standard amount of acreage granted by the government of the Non-Removable Mille Lacs Band of Chippewa Indians for the construction or renovation of residential dwelling on trust lands by the individual members of the Band.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 66.

§ 402. Relinquishment of Title to Residence.

Any person who shall enter into a contractual arrangement for the provision of a residence on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians who shall become delinquent in their housing payments for more than two months shall have no authority to relinquish title to their residence in favor of any creditor by entering into any rental option agreement without first having his mortgage foreclosed pursuant to 21 MLBS §§ 431 and 461. The redemption period found in 21 MLBS § 484 shall be utilized for an opportunity for the home-buyer to recover his residence lost to foreclosure. Any holder of said title to a foreclosed mortgage shall show cause as to why said home-buyer should not have first option to redeem through a six month rent with option to buy contract. Any rents collected pursuant to said agreement shall be utilized to apply to any original principal and interest balance, with attorney fees awarded by the Court, provided the original home-buyer is granted a rent with option contract. In such an event, home-repairs shall be the responsibility of the person who possessed title to the house prior to foreclosure action.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 63.

§ 403. Minnesota Chippewa Tribal Housing Corporation Contracts; Validity of Mortgages.

Any person who shall enter into a contractual arrangement with the Minnesota Chippewa Tribal Housing Corporation for the provisions of a residence to which a mortgage was issued within the previous fifteen years, it is hereby declared by the Band Assembly that all such mortgage documents shall be deemed valid mortgages by the Court of Central Jurisdiction, but subject to provisions found in this chapter.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 63.01.

§ 404. Construction.

21 MLBS §§ 7 and 404 to 406 shall be liberally construed for the purpose of ascertaining marketability of title as between vendor and purchaser.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 62.

§ 405. Presumption of Identity.

The presumption of identity arising from identity or substantial identity of names of a grantee and of a succeeding grantor in a chain of title, shall extend to those cases where in one instrument the party is designated by initials which correspond with the name appearing in another instrument with the exception of the use of Indian names.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 61.

§ 406. Limitation on Foreclosure.

No action or proceeding to foreclosure a real estate mortgage executed prior to January 31, 1975, shall be maintained after May 31, 1985, unless prior to said date the owner of said mortgage shall have filed in the office of the Clerk of Court, in which is located the real estate covered thereby, a notice setting forth the name of the claimant, and description of said real estate and of said mortgage including the volume and page at which it is of record and a statement of the amount claimed to be due thereon. Such notices may be discharged in the same manner as

notices of lis pendens, and so discharged, shall together with all information included therein, cease to constitute either actual or constructive notice.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 60.

§ 407. Holder of Junior Mortgage May Pay Default in Prior Mortgage.

Any person who has a mortgage lien upon any land against which there exists a prior mortgage may pay any taxes or assessments on which any penalty would otherwise accrue, and may pay the premium upon any policy of insurance procured in renewal of any expiring policy upon mortgaged premises, and may in case any interest upon any prior or superior lien is in default, or any part of the principal shall become due, or amortized installment which may be in default upon any such prior lien, pay the same, and all such sums so paid shall become due upon such payment and be a part of the debt secured by such junior mortgage, shall bear interest from date of payment at the same rate as the indebtedness secured by such prior lien, and shall be collectible with, as a part of, and in the same manner as the amount secured by such junior mortgage. Such payments shall be proved by the affidavit of the junior mortgagee, his agent or attorney, stating the items and describing the premises, and a copy must be filed for record with the clerk of court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 55.

§ 408. Reinstatement of Mortgage.

In any proceedings for the foreclosure of a real estate mortgage, whether by action or by advertisement, if at any time before the sale of the premises under such foreclosure the mortgagor, the owner, or any holder of any subsequent encumbrance or lien, or any one of them, shall pay or cause to be paid to the holder of the mortgage so being foreclosed, or to the attorney foreclosing the same, or to the chief law enforcement officer, the amount actually due thereon and constituting the default actually existing in the conditions of the mortgage at the time of the commencement of the foreclosure proceedings, including insurance, delinquent taxes, if any, upon the premises, interest to date of payment, cost of publication and services of process or notices, attorney's fees not exceeding one hundred fifty dollars or one-half of the attorney's fees authorized by 21 MLBS § 410, whichever is greater, together with other lawful disbursement necessarily incurred in connection with the proceedings by the party foreclosing, then and in the event the mortgage shall be fully reinstated and further proceedings in such foreclosure shall be thereupon abandoned.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 56.

§ 409. Purchaser at Foreclosure, Execution, or Judicial Sale May Pay Taxes, Assessments, Insurance Premiums or Interest.

The purchaser at any sale, upon foreclosure of mortgage or execution or at any judicial sale during the year of redemption, may in case any interest or installment of principal upon any prior or superior mortgage is in default or shall become due during such year of redemption, pay the same, and in all such cases, the sum so paid with interest, shall be a part of the sum required to be paid to redeem from such sale. Such payments shall be proved by the affidavit of the purchaser, his agent or attorney, stating the items and describing the premises, which must be filed for record with the clerk of court and a copy thereof shall be furnished to the chief law enforcement officer at least ten days before the expiration of the year of redemption.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 58.

§ 410. Attorney's Fees.

- (a) The mortgagor may, in the mortgage, covenant to pay or authorize the mortgagee to retain an attorney's fees in case of foreclosure; but such fees in case of foreclosure by advertisement shall not exceed the following amounts, and any provisions for fees in excess thereof, shall be void to the extent of the excess:

The original principal amount secured by the mortgage:

less than \$500.00	\$150.00
\$550.00-\$1,000.00	\$160.00
\$1,000.00-\$5,000.00	\$170.00
\$5,000.00-\$10,000.00	\$225.00
exceeding \$10,000.00	\$275.00 plus \$35.00 for each additional \$5,000.00 or major fraction thereof

- (b) The Court shall establish the amount of the attorney's fees in case of foreclosure by action. If at the time of the commencement of the foreclosure proceedings, all of the items, constituting said default were less than thirty days past due, then upon redemption the mortgagor shall not be required to pay the attorney's fees authorized in this section. This section shall apply only to mortgages executed after May 31, 1971.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 57.

SUBCHAPTER 2

FORECLOSURE BY ACTION

Section

- 431. Rules Governing Foreclosure Actions.**
- 432. Foreclosure for Installment: Dismissal, Stay.**
- 433. Judgment.**
- 434. Strict Foreclosure.**
- 435. Purchase by Mortgagee.**
- 436. Surplus.**
- 437. Report, Confirmation, Resale.**
- 438. Satisfaction of Judgment, Execution for Deficiency.**
- 439. Redemption by Mortgagor or Creditor.**
- 440. Delivery of Possession.**

Cross References

Relinquishment of title to residence, *see* 21 MLBS § 402.

§ 431. Rules Governing Foreclosure Actions.

Actions for the foreclosure of mortgages on any residential property and land, shall be governed by the same rules and provisions of Band Statute as civil action, except as in this subchapter otherwise provides.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 17.

§ 432. Foreclosure for Installment: Dismissal, Stay.

When an action is brought for the foreclosure of the mortgage on which there is due any interest, or any portion of the principal and there are other portions to become due subsequently the action shall be dismissed, upon the defendant bringing into Court, at any time before the judgment of sale, the principal and interest due, with costs. If, after such judgment of sale, the defendant brings into Court the principal and interest due, with costs, the action shall be stayed; but the Court shall enter judgment of foreclosure and sale, to be enforced by a further order upon a subsequent default in the payment of any portion of the principal or of interest thereafter to become due.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 21.

§ 433. Judgment.

Judgment shall be entered, under the direction of the Court, adjudging the amount due, with costs and disbursements, and the sale of the mortgaged premises, or some part thereof, to satisfy such amount, and directing the Chief Law Enforcement Officer to proceed to sell the same according to the provisions of law relating to the sale of real estate on execution, and to make report to the Court. A certified transcript of the judgment shall be delivered to the Chief Law Enforcement Officer and shall be his authority for making a sale.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 18.

§ 434. Strict Foreclosure.

Judgment for the strict foreclosure of a mortgage may be given when such remedy is just or appropriate, but in such case no final decree or foreclosure shall be rendered until the lapse of one year after the judgment adjudging the amount due on such mortgage.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 26.

§ 435. Purchase by Mortgagee.

The mortgagee, or any one claiming under him, may fairly and in good faith bid off the premises at such sale; and in such case the statement of such fact in the report of sale shall have the same effect as a receipt for money paid upon a sale for cash.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 19.

§ 436. Surplus.

When the sale is for cash, if after satisfying the mortgage debt, with costs and expenses, there is a surplus, it shall be brought into Court for the benefit of the mortgagor or the person entitled thereto, subject to the order of the Court. If such surplus remains in Court for three months without being applied for, the Judge may direct it to be put out at interest, subject to the order of the Court, for the benefit of the person entitled thereto, to be paid to them upon order of the Court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 20.

§ 437. Report, Confirmation, Resale.

Upon the coming in of the report of sale, the Court shall grant an order confirming the sale, or if it appears upon due examination that justice has not been done, it may order a resale on such terms as are just. If the sale is confirmed, the Chief Law Enforcement Officer shall forthwith execute the proper certificate of sale, which shall be recorded with thirty days after such confirmation.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 22.

§ 438. Satisfaction of Judgment, Execution for Deficiency.

Upon confirmation of the report of sale, the Clerk shall enter satisfaction of the judgment to the extent of the sum bid for the premises, less expenses and Costs, and for any balance of such judgment, execution may issue as in other cases; but no such execution shall issue on the judgment until after a sale of the mortgaged premises, and the application of the amount realized as aforesaid.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 23.

§ 439. Redemption by Mortgagor or Creditor.

The mortgagor, or those claiming under him, within the time specified in 21 MLBS § 484, after the date of the order of confirmation, may redeem the premises sold, or any separate portion thereof, by paying the amount bid therefore, with interest thereon from the time of sale at the rate provided to be paid on the mortgage debt, not to exceed four percent per annum, and, if no rate to be provided in the mortgage, at the rate of four percent, together with any further sum which may be payable pursuant to 21 MLBS § 462. Creditors having a lien may redeem in the order and manner specified in 21 MLBS § 485 but no creditor shall be entitled to redeem unless within such specified redemption period he files with the Clerk notice of his intent to redeem.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 24.

§ 440. Delivery of Possession.

When possession of a residence is wrongfully withheld after expiration of the time of redemption, the Court may compel delivery of possession to the part entitled thereto by order, directing the Chief Law Enforcement Officer to effect such delivery, after hearing to show cause on the merits.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 25.

SUBCHAPTER 3

FORECLOSURE BY ADVERTISEMENT

Section

- 461. Limitation.**
- 462. Requisites for Foreclosure.**
- 463. Notice of Sale, Service On Occupant.**
- 464. Requisites of Notice.**
- 465. Attorney to Foreclose: Record of Power.**
- 466. Sale, How and by Whom Made.**

- 467. Postponement.
- 468. Separate Tracts.
- 469. Foreclosure for Installments; Sales; Disposition of Proceeds; Redemption.
- 470. Statement of Unpaid Amount.
- 471. Surplus.
- 472. Mortgagee or Assignees May Purchase.
- 473. Certificate of Sale.
- 474. Premises in More Than One County; Record.
- 475. Execution After Expiration of Term.
- 476. Perpetuating Evidence of Sale.
- 477. Entry in Record.
- 478. Affidavit of Costs.
- 479. Excessive Costs or Interest.
- 480. Certificate as Evidence.
- 481. Action to Set Aside for Certain Defects.
- 482. Action to Set Aside Sale: Limitation.
- 483. Interest of Purchaser; Attachment or Judgment.
- 484. Redemption by Mortgagor.
- 485. Redemption by Creditor.
- 486. Redemption: How Made.
- 487. Certificate of Redemption.
- 488. Effect of Redemption.
- 489. Foreclosure Pending Action to Set Aside Mortgage; Redemption.

Cross References

Relinquishment of title to residence, *see* 21 MLBS § 402.

§ 461. Limitation.

Subject to the provisions of this chapter, any mortgage or real estate containing a power of sale, upon default being made in any condition thereof, may be foreclosed by advertisement.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 27.

§ 462. Requisites for Foreclosure.

To entitle any part to make such foreclosure, it is requisite: That some default in a condition of such mortgage has occurred, by which the power to sell has become operative. That no such action or proceeding has been instituted at law to recover the debt then remaining secured by such mortgage, or any part thereof, or if the action or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein has been

returned unsatisfied, in whole or in part. That the mortgage has been recorded, and if it has been assigned, that all assignments thereof have been recorded; provided, that if the mortgage is upon registered land, it shall be sufficient if the mortgage and all assignments thereof have been duly registered.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 28.

Cross References

Foreclosure by action, redemption by mortgagor or creditor, *see* 21 MLBS § 439.

§ 463 Notice of Sale, Service On Occupant.

Six weeks published notice shall be given that such mortgage will be foreclosed by sale of the mortgaged premises or some part thereof, and at least four weeks before the appointed time of sale a copy of such notice shall be served in like manner as a summons in a civil action in the Court of Central Jurisdiction upon the person in possession of the mortgaged premises, if the same are actually occupied. If there be a building on such premises used by a church or religious corporation, for its usual meetings, service upon any officer or trustee of such corporation shall be a sufficient service upon it.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 29.

§ 464. Requisites of Notice.

Each notice shall specify: the name of the mortgagor and of the mortgagee and of the assignee of the mortgage, if any and the original principal amount secured by said mortgage. The date of the mortgage and when and where recorded, except where the mortgage is upon registered land, in which case the notice shall state that fact, and when and where registered. The amount claimed to be due thereon, and taxes, if any paid by the mortgagee at the date of the notice. A description of the mortgaged premises, conforming substantially to that contained in the mortgage. The time and place of sale and the time allowed by law for redemption by the mortgagor, his personal representative or assigns.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 30.

§ 465. Attorney to Foreclose: Record of Power.

When an attorney at law is employed to conduct such foreclosure, his authority shall appear by power of attorney executed and acknowledged by the mortgagee or assignee of the mortgage in the same manner as a conveyance, and recorded prior to the sale in the county where the foreclosure proceedings are had. If such attorney be employed on behalf of such mortgagee or assignee by an attorney, in fact his authority shall likewise be evidenced by recorded power.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 31.

§ 466. Sale, How and by Whom Made.

The sale shall be made by the Chief Law Enforcement Officer at public venue to the highest bidder, in the district in which the premises to be sold, or some part thereof are situated, between nine o'clock a.m. and the setting of the sun.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 32.

§ 467. Postponement.

Such sale may be postponed from time to time, by inserting a notice of such postponement as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale is postponed at the expense of the party requesting the same.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 33.

§ 468. Separate Tracts.

If the mortgaged premises consist of separate and distinct farms or tracts, they shall be sold separately, and no more farms or tracts shall be sold than are necessary to satisfy the amount due on such mortgage at the date of notice of such sale, with interest, taxes paid, and costs of sale.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 34.

§ 469. Foreclosure for Installments; Sales; Disposition of Proceeds; Redemption.

Where a mortgage is given to secure the payment of money by installments, each installment, either for principal or interest or both, as is due at any time, may be taken and deemed to be a separate and independent mortgage, and such mortgage for each such installment may be foreclosed by advertisement or by action, in the manner and with like effect as if a separate mortgage were given for each of such installments, and such foreclosure may be made and sale had subject to the installment yet to become due upon the mortgage; and a redemption from any such sale shall have the like effect as if the sale for such installment had been made upon an independent subsequent mortgage; provided in such cases the attorney's fees on the foreclosure so made shall not exceed the amount permitted by law in case of a mortgage securing the amount of the debt then due on such foreclosure. The proceeds of the sale shall be applied first in payment of the costs of the foreclosure sale, and of the installment due with interest thereon, taxes and insurance premiums paid, if any, and then towards the payment of the residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and, if such residue does not bear interest, such application shall be made with rebate of the legal interest for the time during which the residue shall not be due and payable; and the surplus, if any, shall be paid to the subsequent lienor, if any, in the order of their priority, and then to the owner of the equity of redemption, his legal representative or assigns. In case of redemption from any sale herein authorized, at the option of the redemptioner, the whole amount remaining unpaid on the mortgage, with interest and other items, if any, which have become part of the amount secured by the lien of the mortgage, may be included in the amount paid on redemption, and in such event, the redemption so made shall have like effect as if the foreclosure sale had been made for the entire amount secured by the mortgage, including such additional items.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 35.

§ 470. Statement of Unpaid Amount.

Before any sale herein authorized, the holder of the mortgage shall file with the Chief Law Enforcement Officer a verified itemized statement in writing showing the entire amount remaining unpaid on the mortgage, including taxes and insurance premiums paid and other items which have become part of the amount secured, and the rate of interest to accrue on same, which statement shall be subject to public inspection and shall be read by the Chief Law Enforcement Officer at the sale, immediately after reading the notice of sale. The certificate of sale shall set forth correctly, in addition to the amount of sale, the remaining amount still unpaid on and secured by mortgage, subject to which the sale is made and the rate of interest to accrue on same.

If during the time to redeem from the sale, any additional or other item, other than interest at the rate so stated in the certificate shall attach to such amount subject to which the sale was made, or any change shall occur in such amount or the rate of interest thereon, the facts with respect thereto, shall be set forth by affidavit, made and filed for record, and copy furnished the Chief Law Enforcement Officer, in accordance with the provisions of this chapter and the provisions of that section shall apply thereto.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 35.01.

§ 471. Surplus.

In all cases not provided for in 21 MLBS § 470, if after sale of any real estate, made as herein prescribed, there remains in the hands of the officer making the sale any surplus money, after satisfying the mortgage, with interest taxes paid, and costs of sale, the surplus shall be paid over by such officer on demand, to the mortgagor, his legal representative or assigns.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 36.

§ 472. Mortgagee or Assignees May Purchase.

The mortgagee, his assignees, or his or their legal representatives, may fairly and in good faith purchase the premises so advertised, or any part thereof, at such sale.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 37.

§ 473. Certificate of Sale.

- (a) When any sale of real property is made under a power of sale contained in any mortgage, the officer shall make and deliver to the purchaser a certificate, executed in the same manner as a conveyance, containing:
 - (1) A description of the mortgage,
 - (2) A description of the property sold,
 - (3) The price paid for each parcel sold,

- (4) The time and place of the sale, and
 - (5) The name of the purchaser,
 - (6) The time allowed by the law for redemption.
- (b) The certificate shall be recorded within twenty days after such sale, and when so recorded, upon expiration of the time for redemption, shall operate as a conveyance to the purchaser or his assignee of all the right, title and interest of the mortgagor in and to the premises named therein at the date of such mortgage, without any other conveyance.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 38.

§ 474. Premises in More Than One County; Record.

If any mortgage covering real estate in more than one county be foreclosed by proceedings had in one county, and the mortgage debt be thereby paid, in whole or in part, there may be recorded by the clerk of court of the other county a certified copy of the certificate of sale and other foreclosure proceedings of record in the county in which the foreclosure proceedings were had.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 39.

§ 475. Execution after Expiration of Term.

Where the terms of office, of the law enforcement officer who made the sale expires within twenty days thereafter, and before he has executed the certificate required by law, he may execute and acknowledge the same in like manner and with like effect as if his term had not expired.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 40.

§ 476. Perpetuating Evidence of Sale.

Any party desiring to perpetuate the evidence of any sale made in pursuance of this chapter may procure:

- (a) An affidavit of the publication of the notice of sale and of any notice of postponement to be made by the printer of the newspaper in which the same was inserted or by some person in his employ knowing the facts.
- (b) An affidavit or return of service of such notice upon the occupant of the mortgaged premises to be made by the officer or person making such service, or in case the premises were vacant or unoccupied at the time the service must be made, an affidavit or return showing that fact, to be made by the officer or person attempting to make such service.
- (c) An affidavit by the person foreclosing the mortgage, or his attorney, or someone knowing the facts, setting forth the facts relating to the military service status of the owner of the mortgaged premises at the time of sale.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 41.

§ 477. Entry in Record.

A note referring to the page and book where the evidence of any such sale is recorded shall be made by the recorder in the margin of the record of the mortgage.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 42.

§ 478. Affidavit of Costs.

Within ten days after the filing for record of the certificate of sale, the party foreclosing or his attorney shall make and file for record with the clerk of court an affidavit containing a detailed bill of costs and disbursements of the foreclosure, including attorney's fees, and setting forth that the same have been absolutely and unconditionally paid or incurred.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 43.

§ 479. Excessive Costs or Interest.

At any time within one year after the sale, the mortgagor, his heirs or assigns, may recover from the owner of the mortgage at the time of foreclosure three times the amount of any sums charged as costs or disbursements on such foreclosure but not absolutely paid, unless such amounts have been paid to the mortgagor or his assigns.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 44.

§ 480. Certificate as Evidence.

Every law enforcement officer's certificate of sale made under a power, to sell contained in a mortgage shall be prima facie evidence that all the requirements of law in that behalf have been compiled with and prima facie evidence of title in fee thereunder in the purchaser at such sale, his heirs or assigns, after the time for redemption therefrom has expired.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 45.

§ 481. Action to Set Aside for Certain Defects.

No such sale shall be held invalid or be set aside by reason of any defect in the notice thereof, or in the publication or service of such notice, or in the proceedings of the officer making the sale, unless the action in which the validity of such sale is called in question be commenced, or the defense alleging its invalidity be interposed, with reasonable diligence, and not later than five years after the date of such sale; provided that persons under disability to sue when such sale was made by reason of being minors, insane persons, idiots, or persons in captivity of any country with which the United States is at war, may commence such action or interpose such defense at any time within five years after the removal of such disability.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 46.

§ 482. Action to Set Aside Sale: Limitation.

No such sale shall be held invalid or set aside unless the action in which its validity is called in question be commenced, or the defense alleging its invalidity be interposed, within fifteen years after the date of such sale; provided that persons under disability, as provided in 21 MLBS § 481,

may commence such action or interpose such defense within the time therein provided. This section shall not affect or prejudice the rights of any bona fide purchaser.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 47.

§ 483. Interest of Purchaser; Attachment or Judgment.

The interest acquired upon such sale is subject to the line of any attachment or judgment duly made or docketed against the person holding the same, as in case of real property, and may be attached and sold on execution in the same manner.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 48.

§ 484. Redemption by Mortgagor.

- (a) When residences and/or fee land have been sold in conformity with the preceding sections of this chapter the mortgagor, his personal representatives or assigns, within six months after such sale, except as otherwise provided in subsection (b), may redeem such residence and/or fee land hereinafter provided , by paying the sum of money for which the same were sold, with interest from the time of sale at the rate provided to be paid on the mortgage debt, not to exceed four percent per annum, and if no rate be provided in the mortgage, at the rate of four percent per annum, together with any further sums which may be payable pursuant to this chapter. Where the redemption period is as provided in this section, the mortgagee, or his successors, assigns or personal representative or any other purchaser so purchasing at the Chief Law Enforcement Officer's sale shall by purchasing the property at the officer's sale thereby waive his right to a deficiency judgment against the mortgagor.
- (b) Notwithstanding the provisions of subsection (a), when residences have been sold in conformity with the preceding sections of this chapter, the mortgagor, his personal representatives or assigns, within 12 months after such sale may redeem such residence in accordance with the provisions of payment of subsection (a), if the mortgage was executed prior to July 1, 1967, or the amount claimed to be due and owing as of the date of the notice of foreclosure sale is less than 66 percent of the original principal amount secured by the mortgage or the mortgaged premises, as of the date of the execution of the mortgage.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 49.

Cross References

Foreclosure by action, redemption by mortgagor or creditor, *see* 21 MLBS § 439.

§ 485. Redemption by Creditor.

If no such redemption be made by the mortgagor, his personal representatives or assigns, the senior creditor having a lien, legal or equitable, upon the mortgaged premises, or some part subsequent to the mortgage, may redeem within five days after the expiration of the redemption period specified in 21 MLBS § 484 and each subsequent creditor having a lien in succession, according to priority of liens, within five days after the time allowed the prior lien holder, respectively, may redeem by paying the amount aforesaid and all liens prior to his own held by the person from whom redemption is made; provided that no creditor shall be entitled to redeem unless within the period allowed for redemption he file for record notice of his intention to redeem with the clerk of court, of each district where the mortgage is recorded.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 50.

Cross References

Foreclosure by action, redemption by mortgagor or creditor, *see* 21 MLBS § 439.

§ 486. Redemption: How Made.

- (a) Redemption shall be made as follows: The person desiring to redeem shall pay to the person holding the right acquired under such sale, or for him to the chief law enforcement officer, who made the sale, or his successor in office, the amount required by law for such redemption, and shall produce to such person or officer:
 - (1) A copy of the docket of the judgment, or of the deed or mortgage, or of the record or files evidencing any other lien under which he claims a right to redeem, certified by the officer in whose custody such docket, record or files shall be, or the original deed or mortgage, with the certificate of record endorsed thereon.
 - (2) Any assignment necessary to establish his claim, verified by the affidavit of himself or a subscribing witness thereto, or some person acquainted with the signature of the assignor. If the redemption is under an assignment of a

judgment, the assignment shall be filed in the court rendering the judgment, as provided by law, and the person so redeeming shall produce a certified copy thereof, and of the record of its filing and the copy of the docket shall show that the proper entry was made upon the docket.

- (3) An affidavit of himself or his agent, showing the amount then actually due on his lien.
- (b) Within twenty-four hours after such redemption is made, the person redeeming shall cause the documents so required to be produced to be filed with the clerk of court, who shall endorse thereon the date and hour of filing, and shall preserve the same in his office for one year thereafter, for which service he shall be entitled to receive \$1.00. If such redemption shall be made at any place other than the district-seat, it shall be sufficient forthwith to deposit such documents in the nearest post office, addressed to such recorder, with the postage prepaid.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 51.

§ 487. Certificate of Redemption.

- (a) The person or officer from whom such redemption is made shall make and deliver to the person redeeming a certificate executed and acknowledged in the same manner as a conveyance, containing:
 - (1) The name of the person redeeming, and the amount paid by him on such redemption.
 - (2) A description of the sale for which such redemption is made and of the property redeemed.
 - (3) A statement of the claim upon which such redemption is made and if upon a lien, the amount claimed to be due thereon at the date of redemption.
- (b) If redemption is made by the owner of the property sold, his heirs, personal representatives, or assigns such certificate shall be recorded within four days after the expiration of the year allowed him for redemption, and if made by a creditor holding a lien, the certificate shall be recorded within four days after such redemption. Unless so recorded, the certificate shall be void as against any person in good faith redeeming from the same person or lien.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 52.

§ 488. Effect of Redemption.

If redemption is made by the owner of the property sold, his heirs, personal representatives or assigns, such redemption annuls the sale; if by a creditor holding a lien on the property or some part thereof, the certificate of redemption, executed, acknowledged and recorded as provided in 21 MLBS § 487, operates as an assignment to him of the right acquired under such sale, subject to such right of any other to redeem as provided by law.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 53.

§ 489. Foreclosure Pending Action to Set Aside Mortgage; Redemption.

When an action is brought wherein it is claimed that any mortgage as to the plaintiff or person for whose benefit the action is brought is fraudulent or void, or has been paid or discharged, in whole or in part, if such mortgage has been foreclosed by advertisement, and the time for redemption from the foreclosure sale will expire before final judgment in such action, the plaintiff or beneficiary having the right to redeem, for the purpose of saving such right in case the action fails, may deposit with the chief law enforcement officer, before the time of redemption expires the amount for which the mortgaged premises were sold, with interest thereon to the time of deposit, together with a bond to the holder of the chief law enforcement officer's certificate of sale in an amount and with sureties to be approved by the chief law enforcement officer, conditioned to pay all interest that may accrue to be allowed on such deposit if the action fail. He shall, in writing, notify such law enforcement officer that he claims the mortgage to be fraudulent or void or to have been paid or discharged, in whole or in part, as the case may be, and that such action is pending, and direct him to retain such money and bond until final judgment. In case such action fails, such deposit shall operate as a redemption of the premises from such foreclosure sale, and entitle the plaintiff to a certificate thereof. Such foreclosure deposit, bond and notice shall be brought to the attention of the court by supplemental complaint in the action and the judgment shall determine the validity of the foreclosure sale, and the rights of the parties to the moneys and bond so deposited, which shall be paid and delivered by the sheriff as directed by such judgment upon delivery to him of a certified copy thereof. The remedy therein provided shall be' in addition to other remedies now existing.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 54.

CHAPTER 6

RECOVERY OF POSSESSION OF PERSONAL PROPERTY

Section

- 501. Personal Property Recoverable Before Final Judgment.
- 502. Motion.
- 503. Notice of Hearing.
- 504. Findings and Order.
- 505. Protective Orders.
- 506. Stay.
- 507. Claimant's Bond.
- 508. Respondent's Bond.
- 509. Fair Market Value.
- 510. Deposit in Lieu of Bond.
- 511. Order for Seizure of Property.
- 512. Insufficiency of Surety.
- 513. Custody, Delivery and Return of Property.
- 514. Failure of Claimant to Establish Right to Possession.

Cross References

Replevin, *see* 24 MLBS § 3501.

Right to peaceful possession of property, *see* 24 MLBS § 203.

§ 501 Personal Property Recoverable Before Final Judgment.

In any action to recover possession of personal property, a claimant may obtain possession of the property prior to final judgments with the exception of houses.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 3.

§ 502. Motion.

Any person seeking to recover possession of personal property after the service of a complaint and summons, but prior to final judgment shall proceed by motion. The motion shall be accompanied by sworn affidavit which contains the following:

- (a) The property sought to be recovered;

- (b) The facts which gave rise to the claimant's right to possession, referring to the documents, if any, evidencing the claimant's right to possession and the underlying obligation supporting the right;
- (c) The specific facts showing the respondent is wrongfully detaining the property;
- (d) If the property being claimed is secured for an obligation, the date and amount of the original obligation, the amount which has been paid by the respondent and the amount now owing to the claimant;
- (e) A statement that the respondent clearly understood the terms of the agreement;
- (f) If the claimant asserts that the respondent is wrongfully detaining the property by reason of a breach of contractual duty other than the failure to pay money, the claimant shall state the specific contractual provision and the facts relating thereto; and
- (g) A good faith approximation of the current market value of each item or categories of like items of property being claimed.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.

§ 503. Notice of Hearing.

The claimant's motion to recover possession of property together with claimant's affidavit and a notice of hearing shall be served upon the respondent in the manner prescribed in 24 MLBS § 2007(a). If the respondent has already appeared in the action, and the motion may be served by Registered United States mail, Return Receipt Requested. The notice of hearing served upon the respondent shall be signed by the claimant or the attorney for the claimant and shall provide, at a minimum the following information in substantially the following language:

NOTICE OF HEARING

TO: (the respondent)

A hearing will be held on the day of ____ at ____, 19 ____, at o'clock __m, (place) to determine whether the law enforcement officer shall remove from your possession and deliver to (claimant) (hereinafter "claimant") the following property: (List Property)

You have a right to appear at this hearing on your own behalf or with an attorney. You will have the opportunity to present defenses to the claimant's claims and to state reasons why the property described above should not be taken. You shall be presumed to be in illegal possession of the property until you prove otherwise.

If the Court determines that the claimant has a right to have possession of the property while this lawsuit is pending, you may nevertheless keep the property until the lawsuit is decided if you file with the Court a surety bond in the amount of \$... (an amount computed pursuant to 21 MLBS § 507). This amount is (1-1/4 times the claimant's estimate of the value of the property) (1-1/2 times the claimant's claim against you.) If you believe the (value of the property) (amount of the claim) is overstated, you may ask the Court to lower it.

If you do not appear at the hearing, the Court has authority to issue an order directing that the above described property be immediately taken from your possession.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.02.

§ 504. Findings and Order.

After a hearing, the Court shall order seizure of the property from respondent and deliver to claimant, if claimant has demonstrated the probability of success on the merits entitling claimant to possession of the property and upon compliance with the bonding requirements set forth in 21 MLBS § 507, unless the Court makes the following findings: Respondent has shown a defense to the merits of claimant's claim, the defense is a fair basis for litigation and the defense would, if established at hearing on the merits, entitle respondent to retain possession of the property. The interests of respondent cannot be adequately protected by the bond filed by the claimant pursuant to 21 MLBS § 507, if the property is delivered to the claimant prior to final decision on the merits and the harm suffered by the respondent would be substantially greater than the harm which would be suffered by the claimant if the property were not delivered to the claimant prior to final decision on the merits.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40 § 4.03.

§ 505. Protective Orders.

If the Court makes the findings prescribed by 21 MLBS § 504 and orders that respondent may retain possession pending final decision on the merits, the Court shall enter a further order protecting the rights of the claimant to the extent possible. The order may require that respondent make partial payment of the debt which may be due and that the payment shall be made either directly to claimant or into an escrow, that respondent post a bond in an amount set by the Court, that respondent make the property available for inspection from time to time, that respondent be restrained from certain activities, including, but not limited to selling, disposing or otherwise encumbering the property, or any other provision the Court may deem just and appropriate.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.04.

§ 506. Stay.

An order requiring seizure of property may be stayed up to ten days to allow the respondent time to post a bond pursuant to 21 MLBS § 508.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.041.

§ 507. Claimant's Bond.

An order for seizure of property from the respondent shall provide that the seizure shall be contingent upon claimant's filing of a bond approved by the Court conditioned for the return of the property to the respondent, if a return be adjudged and for the payment to the respondent of any sum adjudged against the claimant. The bond shall be in an amount which is 1-½ the fair market value of the property seized.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.05.

§ 508. Respondent's Bond.

Except as otherwise provided in clause, the respondent may retain or regain possession of the property by filing of a bond approved by the Court conditioned that the property shall be delivered to the claimant, if delivery be adjudged, and for the payment to the claimant of any sum adjudged against the respondent. The bond shall be in an amount 1-¼ times the fair market value of the property or 1-½ times the amount of the claimant's claim, whichever is less. An order for seizure may specify a time limitation within which the bond must be filed. For the purpose of protecting or preserving the property pending final hearing on the merits, the Court may in extraordinary circumstances, which shall be specified in its order, provide that the respondent may not retain or regain possession of the property upon re-bonding, or may limit or condition the right to retain or regain the property upon re-bonding. The cost of regaining possession of the property from the sheriff or the claimant shall be borne by respondent except as set forth in 21 MLBS § 514.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.051.

§ 509. Fair Market Value.

The current fair market value of the property shall initially be presumed as stated in the affidavit submitted pursuant to 21 MLBS § 503. If the Court determines the current fair market value of the property is different, it shall adjust the required amount of the bonds.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.052.

§ 510. Deposit in Lieu of Bond.

In lieu of filing a bond, either claimant or respondent may satisfy bonding requirements by depositing with the Court cash, a cashier's check or a certified check.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40 § 4.052.

§ 511. Order for Seizure of Property.

- (a) An order for seizure of property shall:
 - (1) Identify the property to be seized;
 - (2) Direct a law enforcement officer to seize the property; and
 - (3) Specify that the claimant is authorized, immediately or after a specified reasonable period of time, to sell or otherwise dispose of the property pending final hearing on the merits unless the Court makes a specific finding that the interests of respondent cannot be adequately protected by the bond.

- (b) An order for seizure of property may:
 - (1) Describe the place or places which may be entered by force, by the law enforcement officials, subject to the limitations of paragraph (3).

- (2) Require that the respondent, his agents or employees deliver the property to claimant or disclose its location, and if delivery is not made or the location is not disclosed, that respondent must appear in Court at a specified time and place to give testimony as to the location of the property and to show cause why an order should not be entered finding respondent in contempt of court for failure to deliver the property or to disclose its location.
 - (3) Provide that if the property, or any of it is concealed in a building or elsewhere, and a public demand made by the law enforcement official for its delivery is refused or there is no response the law enforcement official shall cause the building or enclosure to be broken open and shall take the property therefrom.
- (c) The law enforcement official may not enter the residence of a person other than respondent unless the order specifies, identifying with particularity the residence or residences which may be entered, on the basis of a finding by the Court that probable cause exists to believe that the property is at this residence.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 5.

§ 512. Insufficiency of Surety.

A person asserting a claim to property seized by order of the Court may by motion challenge the sufficiency of the surety for the bond filed with the Court. If the Court finds the surety insufficient, it may grant a reasonable time for filing of another bond.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 5.04.

§ 513. Custody, Delivery and Return of Property.

When the law enforcement official has taken property pursuant to an order of the Court, he shall keep it in a secure place and shall deliver it to the party entitled thereto as soon as reasonably possible upon receiving his lawful fees and expenses for taking and keeping the property. The law enforcement official shall promptly return, without cost, any property taken which is not specified in the court order.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 5.05.

§ 514. Failure of Claimant to Establish Right to Possession.

If at a hearing following seizure of property pursuant to 21 MLBS § 503, claimant fails to establish a right to continued possession, the Court shall order the property returned to respondent, the costs to be borne by claimant. The Court may order claimant's bond to continue in an amount sufficient to offset damages claimed by respondent by reason of the seizure.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.052.

TITLE 22 - TAXATION

<u>Chapter</u>	<u>Section</u>
1. General Provisions	1
2. Commissioner of Finance	101
3. Tobacco Excise Taxes	201
4. Gasoline and Petroleum Products Excise Tax	301
5. Motor Vehicle Excise Tax	401
6. Sales and Use Taxes	501
7. Public Service Contracts Occupation Tax	601
8. Personal Income Tax	701
9. Estate	801

CHAPTER 1

GENERAL PROVISIONS

Section

1. Findings and Determinations.

Historical and Statutory Notes

Band Statute 1081-MLC-26 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of dispute resolution with the Minnesota Department of Revenue.

'Section 1. Finding and Statement of Purpose. On April 14, 1978, the Mille Lacs Band and the Minnesota Department of Revenue ('Department') entered into an agreement entitled 'Agreement Relating to the Refundment of Sales and Use Taxes and Motor Vehicle Excise Taxes' ('Agreement').

"Section 1.01. The Agreement purports to authorize the Department to collect sales, use and motor vehicle excise taxes from Band members, and obligates the Department to make refund payments to the Band.

"Section 1.02. Serious legal questions have been raised whether the Agreement lawfully authorizes the collection of sales, use and motor vehicle excise taxes from Band members.

"Section 1.03. Notwithstanding these legal questions, the Department has continued to collect sales, use and motor vehicle excise taxes from Band members. However, it has failed to make refund payments due to the Band under the Agreement. The Department is currently in default on its obligations in an amount believed to exceed One Hundred Thousand Dollars (\$100,000.00).

"Section 1.04. The Department claims approximately Twenty-seven Thousand Dollars (\$27,000.00) from the Band in back taxes, interest, and penalties arising from the Band's operation of the 'Drift Inn.' The Band disputes both the application of the Agreement to purchases made from the Band itself and the amount claimed by the Department in connection with the 'Drift Inn.'

'Section 1.05. This statute is enacted to supply the necessary legal authority for the collection of sales, use and motor vehicle excise taxes from Band members, and to resolve the current dispute with the Department over the refund payments that it has failed to make.

"Section 2. Tax Imposed. Subject to the provisions of Section 3 of this statute, a tax equivalent to the tax imposed by Minnesota Statutes, Chapters 297A and 297B is hereby imposed on all sales made on the Mille Lacs Reservation to members of the Mille Lacs Band in the same manner and to the same extent imposed by Chapters 297A and 297B. The tax imposed by this statute shall be collected by all vendors on the Reservation and remitted to the Department in the same manner as required under Chapters 297A and 297B, and such vendors shall be subject to the same penalties, interest and enforcement provisions as set forth in Chapters 297A and 297B.

"Section 3. Effect of Statute Conditioned on Certification by the Solicitor General. This statute shall become effective only upon certification by the Solicitor General of performance by the Department of its obligations under the Agreement.

"Section 3.01 . 'Performance by the Department of its obligations under the Agreement shall mean that the Department: (a) makes payment of all refund payments due under the Agreement less a reasonable amount to be withheld pending resolution of the amount due in connection with the 'Drift Inn'; (b) states in writing that the retention of funds equivalent to the amount due in connection with the 'Drift Inn' shall be in full and final settlement of all claims against the Band arising under the Agreement on or before the date of enactment of this statute; and (c) pledges in writing the Department's support for legislation at payment of interest on refund payments that were withheld by the Department.

"Section 3.02. The Solicitor General shall certify the Department's performance or nonperformance of its obligations under the Agreement of the Band Assembly and Chief Executive on or before December 21, 1984. In the event of a certificate of nonperformance, this statute shall be null and void.

"Section 4. Termination. In the event the Agreement is terminated by the Band or the Department, this statute shall be null and void as of the date of such termination." The Preamble of Band Statute 1085-MLC-30-39 provides:

"It is enacted, a code for the imposition of general sales and excise taxes on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians. The imposition of excise taxes on the sale, use,

consumption, handling, possession and distribution of cigarettes, general sales, gasoline and petroleum products excise tax along with income tax, estate tax, and occupation tax and employment rights provisions for Indians on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians for the expressed purpose of preemption of any applicable taxes imposed pursuant to Minnesota Statutes, Chapter 270-298 on transactions involving the Band and its members of any constituent Band of the Non-Removable Mille Lac Band of Chippewa Indians; and, for other expressed and related purposes vital to the economic affairs and sovereignty of the Non-Removable Mille Lacs Band of Chippewa Indians."

Cross References

Housing authority, property exempt from taxes, *see* 12 MLBS § 29.

Procurement, exemption from state and local taxes, *see* 7 MLBS § 47.

§ 1. Findings and Determinations.

- (a) The Band Assembly hereby finds that the agreement relating to the refundment of sales and use taxes and motor vehicle excise taxes which purports to grant continuing authority to the state of Minnesota to collect taxes from members of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, absent the consent of the Congress of the United States and the consent of each constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians pursuant to 25 U.S.C. §§ 1322 and 1326 was ultra vires, to each party; and, that the Solicitor General properly declared such agreement null and void.
- (b) The Band Assembly hereby finds that the state of Minnesota was officially notified that the agreements on cigarette and alcoholic beverages and petroleum products taxes are terminated effective January 30, 1985.
- (c) The Band Assembly hereby finds and determines that the imposition of an excise tax on the gross receipts from sales at retail establishments under the jurisdiction of the Mille Lacs Band of Chippewa Indians-Corporate Commission is an effective way to regulate commercial activity in this area; and, that such regulations is vital to the economic security, political integrity and general welfare of the constituent Bands on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians. Any such tax, imposed herewith shall preempt any such similar tax imposed by Minnesota Statutes.
- (d)
 - (1) The Band Assembly hereby finds that the imposition of cigarette excise tax on the sale, use, consumption, handling, possession and distribution of cigarettes and tobacco products is an effective way to regulate commercial activity in this area; and, that such regulation is vital to the economic security, political integrity and general welfare of the constituent Bands on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians. Any

such tax imposed herewith shall preempt any such similar tax imposed by Minnesota Statutes.

- (2) The Band Assembly hereby finds that the Mille Lacs Band of Chippewa Indians-Corporate Commission shall be the sole licensed distributor of cigarette and tobacco products to members of any constituent Band on territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, and that the interests of the Band for such a licensed and regulated commercial enterprise outweighs any interest of the state of Minnesota that might exist in the unregulated sale of such products within said territory by the Band.
 - (3) The Band Assembly hereby finds that the sale of state tax-exempt cigarette and tobacco products to non-Indians who enter lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians is prohibited until such time as a government-to-government agreement with the state of Minnesota is concluded which specifically designates the Band as an agent of the state authorized to collect and enforce the Minnesota cigarette excise tax pursuant to Chapter 297-Minnesota Statutes.
 - (4) The Band Assembly hereby finds that the Mille Lacs Band of Chippewa Indians-Corporate Commission shall generate revenues for the Non-Removable Mille Lacs Band of Chippewa Indians through their licensed operation of a cigarette and tobacco products enterprise at the wholesale and retail levels without any loss of a competitive advantage with respect to other businesses in the surrounding territories as a result of any taxation mechanism imposed herewith.
 - (5) The Band Assembly hereby finds that the provisions of this subsection shall be liberally construed so as to be legally sufficient to preclude any justifiable cause for the state of Minnesota and any of its governmental entities or political subdivisions thereof, from any action of seizure, as contraband, of unstamped cigarettes and/or tobacco products traveling to the Mille Lacs Band of Chippewa Indians-Corporate Commission from any out-of-state Indian entity under provisions of the Buy Indian Act (25 U.S.C. § 47).
- (e) The Band Assembly hereby finds and determines that the imposition of an excise tax on all gasoline used in producing and generating power from propelling motor vehicles used in the performance of official Government functions and on all public service contracts whereby the roads under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall be used, is an effective way to regulate commercial activity in this area; and that such regulation is vital to the economic security, political integrity and general welfare of the constituent Bands on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians. Any such tax imposed herewith shall preempt any such similar tax imposed by Minnesota Statutes.

- (f) The Band Assembly hereby finds and determines that the imposition of an excise tax on the purchase price of any motor vehicle purchased or acquired either in or outside of territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, which is required to be registered under the laws of the Non-Removable Mille Lacs Band of Chippewa Indians, is an effective way to regulate commercial activity in this area; and, that such regulation is vital to the economic security, political integrity and general welfare of the constituent Bands on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians. Any such tax imposed herewith shall preempt any such tax imposed by Minnesota Statutes.
- (g) The Band Assembly hereby finds and determines that the imposition of an annual income tax on those persons who earn income from the Non-Removable Mille Lacs Band of Chippewa Indians and any of its political sub-divisions or entities is an effective way to fulfill the general public policy of the Band and that such an imposition of said taxes is vital to the economic security, political integrity and general welfare of the constituent Bands on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians. Any such tax imposed herewith shall preempt any such similar tax imposed by Minnesota Statutes.
- (h) The Band Assembly hereby finds and determines that the imposition of an estate tax upon the transfer of estates of decedents, is an effective way to regulate estate transfers; and, that such regulation is vital to the economic security, political integrity and general welfare of the constituent Bands on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians. Any such tax imposed herewith shall preempt any such similar tax imposed by Minnesota Statutes.
- (i) The Band Assembly hereby declares that the inherent sovereign right to tax shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes.
- (j) The Band Assembly hereby declares that the intent and purposes of this title and 18 MLBS § 401 is to obtain and retain forever the sovereign rights of the people who comprise the constituent Bands of the Non-Removable Mille Lacs Band of Chippewa Indians to be free from all taxation imposed by the state of Minnesota and any of its political subdivisions by the imposition of like taxes to support government services for the people and by the people, and the same shall be liberally construed to effect this purpose. Nothing herein shall be construed as a waiver of sovereign immunity by the Non-Removable Mille Lacs Band of Chippewa Indians in any court of competent jurisdiction with the exception of limited waivers to the Court of Central Jurisdiction authorized herewith.
- (k) The Band Assembly hereby finds and declares that the Solicitor General in and for the Non-Removable Mille Lacs Band of Chippewa Indians shall have an obligation and duty to represent the interests of the Commissioner of Finance in any matter before the Court of Central Jurisdiction that arises from any provision of this title or 18 MLBS § 401. He shall represent the Commissioner in any cause of action where

the performance of the Commissioner's official government function is called into question or where any judgment would expend itself on the property of the Non-Removable Mille Lacs Band of Chippewa Indians. It is hereby enacted into law.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 1.
Band Statute 1085-MLC-30 § 1.10.

Cross References

Licensure of tobacco products distributor, *see* 22 MLBS §211.
Tobacco excise taxes, unlawful activity, *see* 22 MLBS § 216.

CHAPTER 2

COMMISSIONER OF FINANCE

Section

- 101. Reservation of Right.**
- 102. Creation and Term of Office of Commissioner of Finance.**
- 103. Seal.**
- 104. General Powers and Duties of the Commissioner of Finance.**
- 105. Revenue Division.**
- 106. Uniform System of Records and Accounting.**
- 107. Prohibition of Automatic Fund Transfers of Tax Revenue.**
- 108. Emergency Expenditure of Unauthorized Funds.**
- 109. Balanced Budget.**
- 110. Prohibition Against Any Pledge of Taxation Revenue Uncollected.**
- 111. Use of Information.**
- 112. Service of Notice by Mail.**
- 113. Court of Central Jurisdiction-Judicial Review.**
- 114. Relief.**

Historical and Statutory Notes

The Section of Finding and Determinations of Band Statute 1085-MLC-37 provides: "The Findings and Determinations of the Band Assembly enacted in Band Statute 1085MLC-30, Section 1-1.11 [22 MLBS §1] are reenacted and applicable provisions of law for each Chapter of law entitled 'Band Statute 1085-MLC-'31-39'. The designation '31-39' de notes only various chapter numbers of the same Band Statute which are established as the Public Taxation Policy of the Non-Removable Mille Lacs Band of Chippewa Indians."

Band Statute 1085-MLC-37, § 76 provides: "Section 76. Severability. If any provisions of this Chapter, or the application thereof, to any person, business, corporation or state government, or any political sub-division or circumstance is held invalid, the invalidity shall not affect other

provisions or applications of this Chapter which can be given effect without the invalid provisions, or application and to this end the provisions of this Chapter are declared severable."

§ 101. Reservation of Right.

The Band Assembly hereby fully reserves the right to alter, amend or repeal the provisions of this chapter, and all rights and privileges granted or extended hereunder, shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 77.

§ 102. Creation and Term of Office of Commissioner of Finance.

- (a) There is hereby created an appointed position to be known as the Commissioner of Finance. The Commissioner of Finance shall be nominated from amongst three names submitted by the Band Assembly to the Chief Executive. The Chief Executive and Secretary of Treasury shall interview each nominee and return to the Band Assembly within ten days of receipt of the nominees of the Band Assembly, the name of three persons, one of which to be confirmed as Commissioner of Finance. Each nominee shall possess ability and experience in the area of accounting, finance administration or in the area of tax administration. The Commissioner of Finance shall be an appointee of the Non-Removable Mille Lacs Band of Chippewa Indians with responsibility to all branches of Band government in the area of budget and finance. He shall report and fulfill the duties of his office upon direction from the Band Assembly. All such direction to the Commissioner of Finance shall be promulgated pursuant to "Special Revenue Resolution", which is herewith created. Each "Special Revenue Resolution" shall contain the signatures of the Speaker of the Assembly, two members of the Band Assembly and be concurred upon by the Chief Executive.
- (b) The Commissioner of Finance shall serve a term of office to expire April 30, 1 987. Henceforth, the term of office of the Commissioner of Finance shall be four years. The nomination process established in subsection (a) shall apply to all future nominees to this position. All terms of office for the Commissioner of Finance shall commence on May 1 in the applicable odd-year and expire on April 30 in the applicable four-year period.
- (c) The Commissioner of Finance shall have no authority to act beyond April 30 of the year in which his term of office expires in the event of his lack of confirmation to a successive term of office before said date.

- (d) The Commissioner of Finance shall post a fidelity bond in favor of the Non-Removable Mille Lacs Band of Chippewa Indians in an amount satisfactory to the Band Assembly.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 66.
Band Statute 1141-MLC-2, § 10.10.

§ 103. Seal.

The Commissioner of Finance shall direct the preparation of stationery and have a seal engraved with the words, "Non-Removable Mille Lacs Band of Chippewa Indians-Office of Management and Budget: Division of Revenue". Such seal may be prepared and used to authenticate the official acts of the Commissioner or any other members of this Division, but failure to use such seal shall not invalidate any such acts.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 81.

§ 104. General Powers and Duties of the Commissioner of Finance.

It shall be the duty of the Commissioner of Finance, and he shall have following powers and duties:

- (a) The Commissioner of Finance shall be the chief administrative officer of the Office of Management and Budget pursuant to the directives of the Band Assembly.
- (b) The Commissioner of Finance shall have and exercise general supervision over the administration of this title pursuant to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.
- (c) The Commissioner of Finance shall confer with, advise and give the necessary instructions and directions to the Mille Lacs Band of Chippewa Indians-Corporate Commission in the implementation of this title.
- (d) The Commissioner of Finance shall direct proceedings, actions and prosecutions to be instituted to enforce this title for failure or negligence to comply with said provisions, and to cause complaints to be made against any person for their removal from office for misconduct or negligence of duty with respect to this title.

- (e) The Commissioner of Finance shall have the power to require the Solicitor General to assist the commencement of a prosecution in the actions or proceedings for removal, forfeiture and punishment for violations of the laws under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, and to require the Solicitor General to defend the Commissioner of Finance in any action brought against him by any party.
- (f) The Commissioner of Finance shall have the power to require persons under the jurisdiction of the Band to report information as to the collection of taxes received and fees received from licenses, revenue and other sources, and such other information as may be needed in the performance of official duty.
- (g) The Commissioner of Finance shall have the power to require businesses organized pursuant to 16 MLBS § 1 et seq. and the Mille Lacs Band of Chippewa Indians Corporate Commission to furnish information concerning their capital, funded or other debt, current assets and liabilities, earnings, operating expenses, taxes as well as all other statements now required by law for taxation Purposes.
- (h) The Commissioner of Finance shall have the power to summon witnesses to appear and give testimony and to produce books, records, papers and documents relating to any tax matter which he may have authority to investigate or determine.
- (i) The Commissioner of Finance shall have the power to cause the deposition of witnesses residing within or without the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, or absent thereof, to be taken upon notice to the interested party, if any, in like manner that deposition of witnesses are taken in civil actions in the Court of Central Jurisdiction, in any matter which he may have authority to investigate or determine.
- (j) The Commissioner of Finance shall have the power to investigate the tax laws of other reservations, and to formulate and submit to the Band Assembly such legislation as he may deem expedient to prevent evasions of the tax laws of the Band.
- (k) The Commissioner of Finance shall consult and confer with the Band Assembly and the Chief Executive upon the subject of taxation, the administration of the laws, in regard thereto, and the progress of the work of the Commissioner and to furnish the Band Assembly and the Chief Executive from time to time, such assistance and information as they may require relating to tax matters.
- (l) The Commissioner of Finance shall transmit to the Band Assembly and Chief Executive, on or before the third Monday in November of each year, a report for the preceding year, showing all revenues and disbursements thereto, whether the budget of the Band government is balanced thereto, and charts which show monthly revenues and disbursements for the purpose of using said information as a planning tool. Said reports shall also contain information as to the equity of taxes imposed, certainty, convenience economy, stability of tax yield and conservation of tax

resources. He shall state in expressed terms whether or not all taxes imposed are counterproductive to expressed public policy of the Non-Removable Mille Lacs Band of Chippewa Indians and all recommendations for any and all modifications thereto.

- (m) The Commissioner of Finance shall have the power to promulgate rules and regulations through Commissioner's Order for the administration and enforcement of the provisions of this title. Such rules and regulations shall have the force and effect of law.
- (n) The Commissioner shall exercise and perform such further powers and duties, as may be required, or imposed upon him pursuant to "Special Revenue Resolution" as promulgated in 22 MLBS § 102 only or that imposed by law.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 67.
Band Statute 1141-MLC-2, § 10.09.

Cross Reference

Commissioner's Orders, *see* 4 MLBS § 7.
Education-related funds, responsibility of Office of Management and Budget, *see* 9 MLBS § 26.

§ 105. Revenue Division.

Subject to the provisions of this chapter and 22 MLBS § 104 provisions thereto, the Commissioner of Finance shall have the power to organize a Revenue Division within the Office of Management and Budget as he may deem necessary and expedient.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 69.

§ 106. Uniform System of Records and Accounting.

The Commissioner of Finance shall prescribe and establish a uniform system of records and accounting for all revenues and disbursements, which arise from this title. Additionally, he shall design a voucher system, with a master voucher register, cash receipts journal and other applicable and necessary accounting mechanisms that comprise a general books of accounts.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 70.

§ 107. Prohibition of Automatic Fund Transfers of Tax Revenue.

It shall be unlawful for the Commissioner of Finance or any other person to authorize at any financial institution, where taxation revenue of the Band is kept, the automatic fund transfer of any amounts of said funds into said account, or from said account. All transactions involving the disbursement of taxation revenue shall be pursuant to voucher and written bank drafts or checks and all said disbursements shall conform to that authorized by "Special Revenue Resolution."

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 71.

§ 108. Emergency Expenditure of Unauthorized Funds.

- (a) Notwithstanding 22 MLBS §§ 102 and 107, the Band Assembly hereby recognizes that there may be times when, in the best interests of the Band and at only those times, a sufficient number of signatories are not available to authorize a "Special Revenue Resolution", and when the Commissioner of Finance does not possess sufficient authority to expend taxation revenue, the Commissioner of Finance is hereby authorized, upon receipt of a special dispensation request of the Chief Executive or the Secretary of Treasury to expend an amount of funds not to exceed five hundred dollars (\$500.00) provided, that the Commissioner prepare a "Special Revenue Resolution" and obtain the signatures of all available authorized signatories prior to the disbursement of amounts so authorized.
- (b) Upon the exercise of provisions of subsection (a), the Commissioner of Finance shall appear before the Band Assembly at its next scheduled session to obtain approval for any said authorized disbursement. The provisions of subsection (a) shall not be exercised more than one time per any calendar month.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 72.

§ 109. Balanced Budget.

The Commissioner of Finance is hereby authorized and mandated to prepare and maintain an annual budget for the Band government and under no circumstances shall he authorize the expenditure of taxation revenue beyond the amounts of taxation revenue received regardless of Band Assembly approval of budgeted amounts prior thereto. A balanced governmental budget from taxation revenue and other government sources on an annual basis is hereby mandated.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 73.

Cross References

Budget, *see* Const. Art. 6, § 1(1)).

§ 110. Prohibition Against Any Pledge of Taxation Revenue Uncollected.

The Commissioner of Finance or any other person shall not pledge any future taxation revenue as collateral for any governmental loan at any financial institution. Any said pledge as collateral shall be of no force and effect when entered into in violation of provisions of this section.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 74.

§ 111. Use of Information.

Notwithstanding the provisions of any other chapter of this title, the Commissioner of Finance may use any information in his possession, or to which he has access, to insure equal and consistent application and enforcement of all tax laws administered by him. This section shall not be construed as granting the Commissioner of Finance any power to release information under his direct control to any exterior person, entity or government. All information collected shall be deemed highly classified and confidential.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 79.

§ 112. Service of Notice by Mail.

Notwithstanding any other law to the contrary, whenever the Commissioner of Finance is required to serve notices by registered mail, he may, at his discretion, make such service by regular mail retaining for his records adequate proof of such service.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 80.

§ 113. Court of Central Jurisdiction-Judicial Review.

The Court of Central Jurisdiction is hereby granted subject matter jurisdiction, which shall be exclusive, over any cause of action which may arise from implementation of provisions of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 78.

Cross References

Subject matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS §111.

§ 114. Relief.

Any cause of action which arises pursuant to this chapter shall be limited in relief to declaratory or injunctive measures and no damages, monetary or otherwise, including but not limited to attorney fees, shall be permitted.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 78.01.

CHAPTER 3

TOBACCO EXCISE TAXES

Section

201. Reservation of Right.

202. Definitions.

- 203. Tax on Sale of Cigarettes.**
- 204. Tax Upon Use or Storage of Cigarettes by Consumers.**
- 205. Tax on Sale of Tobacco Products.**
- 206. Tax Upon Use or Storage of Tobacco Products.**
- 207. Exemptions to Taxes Imposed Upon Storage.**
- 208. Effect on Other Taxes and Fees.**
- 209. Legal Incidence of Taxes Imposed.**
- 210. Distribution of Free Sample Packages.**
- 211. Licensure of Distributor.**
- 212. Records of Distributor and Retailers.**
- 213. Payment of Tax and Filing of Returns.**
- 214. Contraband.**
- 215. Limit on Cigarette Purchases.**
- 216. Unlawful Activity.**
- 217. Enforcement.**
- 218. Immunity from Self-Incrimination.**
- 219. Revenue Distribution.**
- 220. Administrative Expenses.**
- 221. Court of Central Jurisdiction-Judicial Review.**
- 222. Payment or Bond Prerequisite to Suit.**
- 223. Limited Waiver of Sovereign Immunity.**

Historical and Statutory Notes

Band Statute 1085-MLC-30§18 provides: "Section 18. Severability. If any provisions of this Chapter, or the application thereof, to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of this Chapter which can be given effect without the invalid provisions or application and to this end of the provisions of this Chapter are declared severable."

§ 201. Reservation of Right.

The Band Assembly hereby fully reserves the right to alter, amend, or increase or decrease taxes imposed herein, or repeal the several provisions of this chapter, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 17.

§ 202. Definitions.

When used in this chapter, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively ascribed to them in this section:

- (a) **"Cigarettes"** means any roll for smoking made wholly or in part of tobacco, and encased in any material except tobacco.
- (b) **"Consumer"** means any person who has title to or possession of cigarettes in storage, for use of other consumption in this state.
- (c) **"Distributor"** means the Mille Lacs Band of Chippewa Indians Corporate Commission.
- (d) **"Little Cigar"** means any roll for smoking, made wholly or in part of tobacco, which has a factory list price not exceeding \$ 12 per thousand, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient where such roll has a wrapper or cover made wholly or in part of tobacco, and where such roll weighs not more than three pounds per thousand.
- (e) **"Member"** means any Indian person who resides on or otherwise enters lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, who is recognized by the governing entities of the Band as an enrolled member in any status who is eligible for government services and participating in activities of the Band.
- (f) **"Non-member"** means any person who is not recognized as an enrolled member of the Band and who is not eligible to participate in government services or activities restricted to members only.
- (g) **"Person"** means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency or receiver, or any legal representative of any of the foregoing.
- (h) **"Place of business"** means any place where cigarettes are sold or where cigarettes are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine.
- (i) **"Retailer-Vendor"** means any licensed business entity of the Corporate Commission.
- (j) **"Rights Protection Fund"** means the exterior legal contract between the Band and Ziontz, Pirtle, Morisset, Ernstoff and Chestnut.
- (k) **"Sale"** means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling cigarettes, for advertising, as a means of evading 22 MLBS § 216(f), or for any other purpose whatsoever.
- (l) **"Stamp"** means the adhesive stamp supplied by the revenue commissioner or the imprint made by a tax meter machine authorized by the commissioner.

- (m) **"Storage"** means any keeping or retention of cigarettes for use or consumption in this state.
- (n) **"Tobacco product"** means cigars; little cigars as defined herein; che roots; stogies; periques; granulated, plug, cut crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clipping, cutting and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include cigarettes as defined in this section.
- (o) **"Use"** means the exercise of any right or power incidental to the ownership of cigarettes.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, §19.

Cross References

Membership, *see* Const. Art. 2, § 1.

§ 203. Tax on Sale of Cigarettes.

A tax is hereby imposed upon the sale of cigarettes on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians or having cigarettes in possession on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians with the intent to sell and a tax upon the Mille Lacs Band of Chippewa Indians-Corporate Commission as the licensed distributor at the following rates:

- (a) The tax on cigarettes is hereby imposed in the amount of eighteen cents per package of cigarettes.
- (b) The tax on long cigarettes per unit packages shall be eighteen cents per package of cigarettes.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 2.

§ 204. Tax Upon Use or Storage of Cigarettes by Consumers.

A tax is hereby imposed upon the use or storage by Indians who consume cigarettes and who reside on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, and upon such consumers at the following rates:

- (a) The tax on such cigarettes shall be eighteen cents on each such package of cigarettes.
- (b) The tax on such cigarettes is hereby imposed in the amount of eighteen cents per package of cigarettes.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 3.

§ 205. Tax on Sale of Tobacco Products.

A tax is hereby imposed upon all tobacco products in the territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians and upon the Mille Lacs Band of Chippewa Indians - Corporate Commission, as the sole licensed distributor of tobacco products at the rate of twenty (20) percent of the wholesale sales price of such tobacco products, except little cigars, which shall be taxed at the same rates as cigarettes. Long grain and plug tobacco used for cultural purposes is hereby exempt from taxes imposed herein.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 4.

§ 206. Tax Upon Use or Storage of Tobacco Products.

A tax is hereby imposed upon the use or storage by Indian consumers of tobacco products on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians, and upon such consumers, at a rate of twenty (20) percent of the cost of such tobacco products, except little cigars which shall be subject to the same rate of tax imposed on cigarettes found in 22 MLBS § 203 with the exception of long grain and plug tobacco used for cultural purposes.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 4.01.

§ 207. Exemptions to Taxes Imposed Upon Storage.

- (a) Except as otherwise provided in this chapter, any consumers who shall store cigarettes or little cigars of two hundred (200) or less in the possession of any one consumer, provided that such cigarettes or little cigars were carried into lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians by such consumers.
- (b) The tax shall not apply to the storage of tobacco products in quantities of:
 - (1) Not more than fifty (50) cigars;
 - (2) Not more than ten (10) ounces of snuff or snuff powder;
 - (3) Not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 5.

§ 208. Effect on Other Taxes and Fees.

The tax imposed by this chapter shall be in addition to any and all other taxes or license fees now or hereafter imposed.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 5.014.

§ 209. Legal Incidence of Taxes Imposed.

- (a) The legal incidence of the Non-Removable Mille Lacs Band of Chippewa Indians cigarette and tobacco products excise tax on the sale, use, consumption, handling, possession and distribution of said products shall be placed on the Mille Lacs Band of Chippewa Indians-Corporate Commission, as the sole licensed distributor who will first sell, use, consume, handle, possess and distribute the cigarette and tobacco products. As the first taxable event, the Commission as an Indian retailer upon whom the tax imposed by Minnesota Statutes Chapter 297 cannot be legally imposed as it is herewith preempted by this chapter of the law of the Non-Removable Mille Lacs Band of Chippewa Indians.

- (b) The Mille Lacs Band of Chippewa Indians-Corporate Commission may shift the economic incidence of taxes imposed by this chapter to the ultimate consumer and such a tax so shifted shall be considered as consensual.
- (c) The tax imposed by this chapter shall not be construed as a cost of doing business or an overhead expense by the Mille Lacs Band of Chippewa Indians Corporate Commission.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, §§ 5.015, 6.

§ 210. Distribution of Free Sample Packages.

- (a) The Commissioner of Corporate Affairs may authorize distribution of free packages of cigarettes by the Corporate Commission on the territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians provided that monthly reports and payment of taxes as imposed in 22 MLBS § 203 shall be made directly to the Commissioner of Finance in the manner and under the terms provided for by him.
- (b) Any manufacturer is authorized to provide such packages that contain not more than fifteen (15) cigarettes per package.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 7.

§ 211. Licensure of Distributor.

- (a) The Mille Lacs Band of Chippewa Indians-Corporate Commission shall apply to the Band Assembly, upon the recommendation of the Chief Executive no later than March 1, 1985 for a license to distribute to any business entity of the Commission, cigarette and tobacco products for consumption by any member of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians or to any non-member pursuant to any agreement authorized in 22 MLBS § 1(d)(3).
- (b) The application for such a license shall be made on a form prescribed by the Solicitor General and shall state the name and address of the applicant, the names and addresses of the incorporators, the names and addresses of officers, the address of its principal place of business, the locations of business entity(s) where cigarette and tobacco products will be sold and other such information as the Solicitor General may prescribe.

- (c) The application for a distributors license shall be accompanied by a fee of two hundred dollars and a corporate surety bond issued by the Secretary of Treasury in the amount of one thousand dollars, conditioned upon the true and faithful compliance by the licensee with all of the provisions of this chapter. A separate application for license as a retail vendor shall be made for each place of business authorized pursuant to subsection (a), shall be accompanied by a fee of one hundred dollars.
- (d) Any license issued pursuant to the provisions of subsection (a) shall be valid for a period of one year from the date of issuance. Renewal license shall be issued, founded upon faithful compliance with the provisions of this Chapter and a fee of one hundred dollars for the distributors license and fifty dollars for the retailer's license.
- (e) Each license shall be prominently displayed on the premises covered by the license. No license shall be transferable to any other person or entity.
- (f) The Solicitor General, upon probable cause, may revoke, cancel or suspend the license of the distributor or any retailer for violations of provisions of 22 MLBS §§ 212-214 and 216-218, or any other law applicable to the sale of tobacco products. No license shall be revoked or canceled except after notice and hearing as provided in 22 MLBS §§ 217 and 218.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 8.

§ 212. Records of Distributor and Retailers.

- (a) Every distributor and retailer of cigarette and tobacco products, at its licensed place of business shall keep accurate records for that place of business including itemized invoices of cigarettes held, purchased, brought in, all sales of cigarettes made to the retailers and ultimate member consumers. When the distributor sells cigarettes to any member consumer at its licensed address, an invoice of those sales shall be required. The distributor is also required to itemized invoices of its sales to retail vendors. All records, books and other pertinent papers and documents relating to the purchase, sale or disposition of cigarettes shall be preserved for a period of one year after the date of the document or record entry. All records, books and other pertinent papers and documents relating to the purchase, sale or disposition of cigarettes shall be classified and confidential property of the Non-Removable Mille Lacs Band of Chippewa Indians, and shall not be open to inspection by any person or state governmental entity exterior to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. All such documents shall be deemed classified and restricted to a cause-to-know-basis for those persons subject to interior jurisdiction; and, the Court of Central Jurisdiction shall be bound thereby.

- (b) At any time during normal business hours the Commissioner of Finance, or his duly authorized agents, may enter any retail business of the Corporate Commission, without a search warrant and inspect the premises, the records required to be kept under subsection (a) and the packages of cigarettes to determine whether or not all the provisions of this chapter are being fully complied with. Any interference, deception, hindrance or denial of free access in making such examination shall result in the immediate suspension of any license and legal action to revoke said license.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 9.

§ 213. Payment of Tax and Filing of Returns.

- (a) On or before the twenty-first day of each month, the retailers shall file a return with the Commissioner of Finance showing the sale price, the quantity of cigarette and tobacco products sold during the previous month, the quantity of cigarettes and tobacco products in inventory and other information deemed necessary on a form prescribed by the Commissioner of Finance. The return shall be accompanied by a certification, under penalty of perjury, that the information contained is true and correct. The provisions of this subsection and subsection (d) shall be applicable provisions to the filing of returns and payment of taxes levied in all the chapters of this title, unless expressly superseded or contrary to existing language within each chapter. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.
- (b) On the twenty-first day of each month, the distributor shall file a return with the Commissioner of Finance showing the quantity of cigarette and tobacco products brought into the territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, the quantity of said products assigned to the retailers, the quantity of said products held in inventory on a form prescribed by the Commissioner of Finance. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. The return shall also contain a statement that the information provided is true and correct under penalty of perjury and be signed by the Commissioner of Corporate Affairs.
- (c) All returns, together with any corrections according to the best judgment and information of the Commissioner of Finance, shall be prima facie evidence of the correctness of the amount of tax due, as shown therein.
- (d) All returns which are late and payments of taxes which are due pursuant to time specified in subsection (b) shall be liable for penalty of ten percent per month on the tax found due. In addition, a penalty of \$10.00 for the first month (28 days) plus \$5.00 for each month thereafter until the maximum penalty of \$25.00 is reached. If it is found that a false and fraudulent return has been filed or filed late with intent to

evade the taxes imposed in 22 MLBS § 203, 204, 205 or 206, the offense shall be subject to criminal prosecution and civil liability.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 10.

§ 214. Contraband.

- (a) All packages of cigarettes which are sold to members by the distributor and/or any authorized retailer which contain stamps affixed to them pursuant to Minnesota Statutes-Chapter 297.01-297.13 shall be deemed as contraband and seized with or without process and shall be subject to forfeiture.
- (b) Any device for the vending of cigarettes to members which contain stamps authorized pursuant to Minnesota Statutes-Chapter 297.01-297.13 shall be deemed as contraband and seized with or without process and shall be subject to forfeiture.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, §11.

§ 215. Limit on Cigarette Purchases.

No member shall purchase more than five (5) cartons of cigarettes from any licensed retailer or the distributor during one calendar day.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, §7.02.

§ 216. Unlawful Activity.

- (a) Any person, who is required to keep records or to make returns who shall falsify or fail to keep such records or falsify or fail to make such returns, shall be deemed guilty of falsification of records, and upon conviction thereof, shall be fined up to five hundred dollars, and/or sentenced to labor not to exceed 180 days.
- (b) Any person other than a licensed distributor and/or retailer, who shall sell, offer to sell or have in his/her possession with intent to sell or offer for sale any cigarettes or tobacco products, shall be deemed guilty of unlawful possession, and upon

conviction thereof, shall be sentenced to labor not to exceed 180 days, and/or a fine not to exceed five hundred dollars.

- (c) Any person, who shall refuse to permit the examination of records by authorized officials of the Band or shall interfere with the performance of official duty, shall be deemed guilty of obstruction of government function, and upon conviction thereof, shall be sentenced to labor, not to exceed 180 days, and/or a fine not to exceed five hundred dollars.
- (d) Any person other than an authorized representative of the distributor or retailer, who shall possess, receive or transport more than two thousand cigarettes shall be deemed guilty of an unlawful possession of contraband, and upon conviction thereof, shall be sentenced to labor not to exceed 180 days, forfeiture of said contraband, and/or a fine not to exceed five hundred dollars.
- (e) Any authorized representative of the distributor or retailer, who shall offer for sale or who shall sell any cigarettes or tobacco products to a nonmember of the Non-Removable Mille Lacs Band of Chippewa Indians absent provisions authorized by 22 MLBS § 1(d)(3) shall be deemed guilty of an illegal sale of contraband, and upon conviction thereof, shall be sentenced to labor not to exceed 180 days, and/or a fine not to exceed five hundred dollars.
- (f) Any person, who in any manner attempts to evade or who aids or abets in the evasion or attempted evasion of any provisions of this chapter, shall be deemed guilty of evasion, and upon conviction thereof, shall be sentenced to labor not to exceed 180 days, and/or a fine not to exceed five hundred dollars.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 12.

§ 217. Enforcement.

The Commissioner of Finance shall enforce all provisions of this chapter. He may prescribe all rules and regulations consistent with the provisions of this chapter through Commissioner's Orders. He may call upon the Solicitor General or any Band law enforcement officer to aid him in the performance of his duties. He may appoint such employees of the Non-Removable Mille Lacs Band of Chippewa Indians as may be required to administer the provisions of this chapter. He may bring injunction proceedings against the distributor or any licensed retailer from acting in a manner inconsistent with the provisions of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 13.

§ 218. Immunity from Self-Incrimination.

No person shall be excused from testifying or from producing, pursuant to a subpoena, any books, papers, records or memoranda in any investigation, upon the grounds that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to criminal prosecution. Any person, who shall testify, shall receive immunity from such prosecution provided that the testimony under oath be the truth, pursuant to the lawful subpoena. No person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 1302.

Cross References

Self-incrimination, *see* 1 MLBS § 4.

§ 219. Revenue, Distribution.

- (a) All revenues derived from taxes, penalties and interest from this Chapter shall be deposited in a trust fund account in the name of the 'Non- Removable Mille Lacs Band of Chippewa Indians: Taxation Revenue Account' and not be distributed except upon formal Revenue Resolution of the Band Assembly so directing disbursement.
- (b) The Band Assembly hereby declares that the revenues from cigarette and tobacco products taxes shall be distributed to the Rights Protection Fund. Notwithstanding subsection (a), any expenditure of said funds for purposes other than exterior legal funding purposes shall require a Revenue Resolution of the Band Assembly.
- (c) It shall be unlawful to disburse any revenues from cigarette and tobacco products to any elected or appointed person, or employee of the Non-Removable Mille Lacs Band of Chippewa Indians, or of any entity of the Band or for any purpose inconsistent with subsection (b).

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 14.

§ 220. Administrative Expenses.

In no event, shall the expenses of administration of the provisions of this chapter exceed five percent of the gross receipts of the taxes imposed herein.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 13.01.

§ 221. Court of Central Jurisdiction-Judicial Review.

The Court of Central Jurisdiction is hereby granted exclusive subject matter jurisdiction over any cause of action which may arise from the implementation of provisions of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 15.

§ 222. Payment or Bond Prerequisite to Suit.

Any person, who shall have a cause of action arising from any provisions of this chapter, may petition the Court only upon first payment of any tax due or the posting of a bond in the amount due in favor of the Taxation Revenue Account as a means that he/she intends to pay the tax if the Court so requires.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 15.01.

§ 223. Limited Waiver of Sovereign Immunity.

- (a) The Band Assembly hereby waives sovereign immunity to be sued only in the Court of Central Jurisdiction in any seizure of property matter pursuant to provisions of this chapter. However, any such action shall only be directed against the Commissioner of Finance, in his/her official capacity in order to challenge any seizure action.
- (b) Any said limited waiver of sovereign immunity shall be valid only in the Court of Central Jurisdiction and subject to further limitations in subsections (c) and (d).
- (c) Any and all seizure causes of action which arise pursuant to this chapter shall be limited to actions against the Commissioner of Finance in his official capacity for an order returning any seized goods.
- (d) All other causes of action which arise pursuant to this chapter shall be limited in relief to declaratory or injunctive measures and no damages, monetary or otherwise, including but not limited to attorney fees shall be permitted.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-30, § 16.

CHAPTER 4

GASOLINE AND PETROLEUM PRODUCTS EXCISE TAX

Section

- 301. Reservation of Right.**
- 302. Definitions.**
- 303. Imposition of Gasoline Excise Tax.**
- 304. Authorization for Price Bidding Amongst Retailers on Lands Exterior to Jurisdiction of Non-Removable Mille Lacs Band of Chippewa Indians.**
- 305. Violations.**
- 306. Official Travel for Government Purposes Utilizing Personal Vehicles.**
- 307. Legal Incidence.**
- 308. Identification Cards.**
- 309. Offenses.**
- 310. Enforcement.**
- 311. Immunity from Self-Incrimination.**
- 312. Revenue Distribution.**
- 313. Refunds to Contractors.**
- 314. Administrative Expenses.**
- 315. Court of Central Jurisdiction-Judicial Review.**
- 316. Payment or Bond as Prerequisite to Suit.**
- 317. Limited Waiver of Sovereign Immunity.**

Historical and Statutory Notes

The Section of Finding and Determinations of Band Statute 1085-MLC-32 provides: "The Findings and Determinations of the Band Assembly enacted in Band Statute 1085MLC-30, Section 1-1.11 [22 MLBS § 1] are reenacted and applicable provisions of law for each Chapter of law entitled 'Band Statute 1085-MLC-31-39'. The designation '3 1-39' de notes only various chapter numbers of the same Band Statute which are established as the Public Taxation Policy of the Non-Removable Mille Lacs Band of Chippewa Indians."

Band Statute 1085-MLC-32, § 43 provides: "Section 43. Severability. If any provisions of this Chapter, or the application thereof, to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of this chapter which can be given effect without the invalid provisions or application and to this end of the provisions of this Chapter are declared severable."

Cross References

Native American Veteran Direct Loan Program, unlawful detainer, *see* 12 MLBS § 115.
Payment of tax and filing of returns, *see* 22 MLBS § 213.
Residential heating fuels, exemption from sales tax, *see* 22 MLBS § 507.

§ 301. Reservation of Right.

The Band Assembly hereby fully reserves the right to alter, amend, or increase or decrease taxes imposed herein, or repeal the several provisions of this chapter, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 42.

§ 302. Definitions.

When used in this chapter, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively, ascribed to them in this section:

- (a) **"Dealer"** means any person, except a distributor, engaged in the business of buying and selling gasoline and other petroleum products in this state.
- (b) **"For use in motor vehicle"** means for use in producing or generating power for propelling motor vehicles on the public highways of this state or in machinery operated on the public highways of this state for the purpose of constructing, reconstructing, or maintaining such public highways. For purpose of this subsection "public highways" shall include bridges.
- (c) **"Gasoline"** means all products commonly or commercially known or sold as gasoline (including casing head and absorption or natural gas) regardless of their classification or uses.
- (d) **"Motor vehicle gasoline excise tax"** means the tax imposed on gasoline used in producing and generating power for propelling motor vehicles used on the public highways of this state.
- (e) **"Person"** means any individual, firm, trust, estate, partnership, association, cooperative association, joint stock company or corporation, public or private, or any representative appointed by order of any court.
- (f) **"Petroleum Products"** means gasoline and fuel oil.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 45.

§ 303. Imposition of Gasoline Excise Tax.

- (a) There is hereby imposed an excise tax of fifteen cents per gallon on all gasoline and an excise tax of thirty cents per gallon on all diesel fuel used in producing and generating power for propelling all vehicles used for the lawful business of the Non-Removable Mille Lacs Band of Chippewa Indians used on those roads under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. Further, said excise tax shall apply to gasoline and diesel fuel used in producing and generating power for propelling all motor vehicles used in the construction of new roads and the repair of existing roads pursuant to any public service contract which benefits members of the Non-Removable Mille Lacs Band of Chippewa Indians. Further, said excise tax shall apply to gasoline used in producing and generating power for propelling all motor vehicles owned by members of the Non-Removable Mille Lacs Band of Chippewa Indians when purchased from a retail vendor organized pursuant to 16 MLBS § 1.
- (b) The Office of Management and Budget is hereby authorized and directed to add fifteen cents to each gallon of gasoline purchased and thirty cents to each gallon of diesel fuel purchased and five percent of the gross receipts of petroleum products purchases to fulfill government purposes and to forward such calculated amounts to a trust fund account which is herewith created and entitled "Non-Removable Mille Lacs Band of Chippewa Indians: Petroleum Products Revenue Account" within five days after monthly payment to any authorized dealer for gasoline, diesel and petroleum products purchases during the previous month.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, §§ 33.35.02.

§ 304. Authorization for Price Bidding Amongst Retailers on Lands Exterior to Jurisdiction of Non-Removable Mille Lacs Band of Chippewa Indians.

The Commissioner of Corporate Affairs is hereby authorized and directed to publish a notice for bids from any gasoline dealer within a thirty-mile radius of any lands under the jurisdiction of the Band, for the provisions of gasoline and diesel fuel at a negotiated price to all vehicles used for the lawful business of the Non-Removable Mille Lacs Band of Chippewa Indians, including all vehicles of any retail establishment organized pursuant to Band Statute 1077-MLC-16 by March 1, 1985. The Commissioner of Corporate Affairs is also authorized and directed to negotiate an annual geographical agreement with the lowest geographical bidder(s) to supply

gasoline, diesel fuel and petroleum products to all said vehicles pursuant to 22 MLBS § 303 by March 15, 1985 with said contractual agreement to be ratified by the Band Assembly, no later than March 20, 1985. Imposition of gasoline excise taxes (22 MLBS § 303) will not be effective until the Commissioner of Corporate Affairs sets up the storage tanks and publishes a notice for bids from any gasoline dealers within a thirty-mile radius of Band land.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 34.

Cross References

Procurement, *see* 7 MLBS § 1.

§ 305. Violations.

- (a) Any person, subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, who shall operate any vehicle described in 22 MLBS § 303, who shall purchase gasoline from any retail vendor to which no annual agreement is in force and effect, shall be fully liable for payment of the amount purchased from personal funds of said person; unless, prior written authorization from the Commissioner of Finance is granted.
- (b) The Office of Management and Budget is hereby authorized to make an automatic deduction from the wages of any person who is an employee, upon receipt of proper notice from the Commissioner of Finance, that a gasoline purchase violation has occurred.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 35.

§ 306. Official Travel for Government Purposes Utilizing Personal Vehicles.

- (a) Any person who shall operate a personal vehicle on any authorized trip travel to fulfill government purposes, with said destination and return to require one tankful of gasoline or less, shall purchase gasoline only from an authorized dealer at the commencement of said trip. The amount of gasoline purchased to be deducted from any trip travel amount authorized pursuant to policy.
- (b) Any person who shall operate a personal vehicle on any authorized trip travel to fulfill government purposes, with said destination and return requires the purchase of gasoline at a dealer who is not authorized, shall purchase such gasoline from travel funds received and obtained a receipt from said dealer in the name of the Non-

Removable Mille Lacs Band of Chippewa Indians. All such receipts shall be submitted on a monthly basis to the Commissioner of Revenue, state of Minnesota for proper refund of inapplicable taxes.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 36.

§ 307. Legal Incidence.

The legal incidence of the Non-Removable Mille Lacs Band of Chippewa Indians gasoline excise tax shall be placed upon each entity of the Executive branch of government, all independent commissions and all retail vendors licensed pursuant to 18 MLBS §101. With specific regard to personal motor vehicle operated for personal use, the legal incidence of this tax shall not be construed as falling upon any consumer in the event of an economic shifting incidence authorized by the Mille Lacs Band of Chippewa Indians-Corporate Commission.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 44.

§ 308. Identification Cards.

The Commissioner of Natural Resources is hereby authorized to design and implement a system of Band government identification cards required for the lawful performance of official government service and to promulgate through Commissioner's Orders all regulatory mechanism for the prevention of misuse and abuse of said system. This government identification system shall be required for the lawful purchase of gasoline at any authorized gasoline dealer.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 44.01.

§ 309. Offenses.

- (a) Any person who knowing shall with authorization operate a personal or Band owned and operated motor vehicle propelled with gasoline and diesel fuel purchased for government use for non-governmental purposes shall be deemed guilty of an unlawful use of government property, and upon conviction thereof, shall be sentenced to pay a fine of one hundred dollars.

- (b) Any person who shall knowingly purchase gasoline and diesel fuel from an authorized dealer with the intent to operate such vehicle for nongovernment purposes, shall be deemed guilty of theft, and upon conviction thereof, shall be sentenced to liability for the debt and a fine of one hundred dollars.
- (c) Any person who is required to keep records or to make returns who shall falsify or fail to keep such records or falsify or fail to make such returns, shall be deemed guilty of falsification of records, and upon conviction thereof, shall be fined up to five hundred dollars, and/or sentenced to labor not to exceed 180 days.
- (d) Any person, who shall refuse to permit the examination of records by authorized officials of the Band or shall interfere with the performance of official duty, shall be deemed guilty of obstruction of government function, and upon conviction thereof, shall be sentenced to labor, not to exceed 180 days, and/or a fine not to exceed five hundred dollars.
- (e) Any person, who in any manner attempts to evade or who aids or abets in the evasion or attempted evasion of any provision of this chapter, shall be deemed guilty of evasion, and upon conviction thereof, shall be sentenced to labor not to exceed 180 days, and/or a fine not to exceed five hundred dollars.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 37.

§ 310. Enforcement.

The Commissioner of Finance shall enforce all provisions of this chapter. He may prescribe all rules and regulations consistent with the provisions of this Chapter through Commissioner's Orders. He may call upon the Solicitor General or any Band law enforcement officer to aid him in the performance of his duties. He may appoint such employees of the Non-Removable Mille Lacs Band of Chippewa Indians as may be required to administer the provisions of this chapter. He may bring injunction proceedings against the distributor or any licensed retailer from acting in a manner inconsistent with the provisions of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 38.

§ 311. Immunity from Self-Incrimination.

No person shall be excused from testifying or from producing, pursuant to subpoena, any books, papers, records or memoranda in any investigation, upon the grounds that the testimony or

evidence, documentary or otherwise, may tend to incriminate him or subject him to criminal prosecution. Any person who shall testify shall receive immunity from such prosecution provided that the testimony under oath be the truth, pursuant to a lawful subpoena. No person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 38.02.

Cross References

Self-incrimination, see 1 MLBS § 4.

§ 312. Revenue Distribution.

All revenues derived from taxes, penalties and interest from this chapter shall be deposited in a trust fund account in the name of "Non-Removable Mille Lacs Band of Chippewa Indians: Taxation Revenue Account" and not be distributed except upon formal Revenue Resolution of the Band Assembly so directing disbursement.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-2, § 39.

§ 313. Refunds to Contractors.

The Commissioner of Finance is hereby authorized to refund to any public service contractor one half of the gasoline excise tax and diesel fuel excise tax collected for the use in the construction or repair of roads under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians upon presentation of verifiable receipts of gasoline purchased at any authorized dealer. Any said refund shall be monthly for the previous months purchases on forms prescribed by the Commissioner of Finance, lest they be forfeited.

Historical and Statutory Notes

Source:

Band Statute 1055-MLC-32 § 35.03.

§ 314. Administrative Expenses.

In no event shall the expenses of administration of the provisions of this chapter exceed five percent of the gross receipts of the taxes imposed herein.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 38.01.

§ 315. Court of Central Jurisdiction-Judicial Review.

The Court of Central Jurisdiction is hereby granted exclusive subject matter jurisdiction over any cause of action which may arise from the implementation of provisions of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 40.

Cross References

Subject matter jurisdiction court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 316. Payment or Bond as Prerequisite to Suit.

Any person who shall have a cause of action arising from any provisions of this chapter may petition the Court only upon first payment of any tax due or the posting of a bond in the amount due in favor of the Taxation Revenue Account as a means that he/she intends to pay the tax if the Court so requires.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 40.01.

§ 317. Limited Waiver of Sovereign Immunity.

- (a) The Band Assembly hereby waives sovereign immunity to be sued only in the Court of Central Jurisdiction in any seizure of property matter pursuant to provisions of this Chapter. However, any such action shall only be directed against the Commissioner of Finance, in his/her official capacity in order to challenge any seizure action.
- (b) Any said limited waiver of sovereign immunity shall be valid only in the Court of Central Jurisdiction, and subject to further limitations in subsections (c) and (d).
- (c) Any and all seizure causes of action which arise pursuant to this chapter shall be limited to actions against the Commissioner of Finance in his official capacity for an order returning any seized goods.

- (d) All other causes of action which arise pursuant to this chapter shall be limited in relief to declaratory or injunctive measures and no damages, monetary or otherwise, including but not limited to attorney fees shall be permitted.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-32, § 41.

CHAPTER 5

MOTOR VEHICLE EXCISE TAX

Section

401. Imposition of Excise Tax on Purchase Price of Motor Vehicle.

402. Application of Provisions of Chapter 6.

Historical and Statutory Notes

The Section of Findings and Determinations of Band Statute 1085-MLC-33 provides; "The Findings and Determinations of the Band Assembly enacted in Band Statute 1085MLC-30, Sections 1-1.1 1 [22 MLBS § 1) are reenacted as applicable provisions of law for each Chapter of law entitled 'Band Statute 1085-MLC-31-39'. The designation '31-39' denotes only various Chapter numbers of the same Band Statute, which are established as the Public Taxation Policy of the Non-Removable Mille Lacs Band of Chippewa Indians."

Cross References

Motor vehicles, *see* 19 MLBS § 1.

Native American veteran Direct Loan Program, *see* 12 MLBS §101.

Payment of tax and filing of returns, *see* 22 MLBS §213.

§ 401. Imposition of Excise Tax on Purchase Price of Motor Vehicle.

There is hereby imposed an excise tax of five percent on the purchase price of any motor vehicle purchased or acquired on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, which is required to be registered under the laws of the Band.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 46.

Cross References

Motor vehicle registration, *see* 19 MLBS § 101.

§ 402. Application of Provisions of Chapter 6.

All provisions of Chapter 6 of this title the Non-Removable Mille Lacs Band of Chippewa Indians in the following sections numbered: 22 MLBS §§ 501, 505, 506 and 510-517 and 1085-MLC-31, § 31 in toto shall apply herewith.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 47.

CHAPTER 6

SALES AND USE TAXES

Section

- 501. Reservation of Right.**
- 502. Definitions.**
- 503. Imposition of General Sales Tax.**
- 504. Legal Incidence of Tax Imposed.**
- 505. Tax as Debt from Retailer to Band.**
- 506. Presumption and Burden of Proof.**
- 507. Exemptions from Sales Tax.**
- 508. Road Building Materials.**
- 509. Special Surcharge Taxes.**
- 510. Offenses.**
- 511. Enforcement.**
- 512. Immunity from Self-Incrimination.**
- 513. Revenue Distribution.**
- 514. Administrative Expenses.**
- 515. Court of Central Jurisdiction-Judicial Review.**
- 516. Payment or Bond Prerequisite to Suit.**
- 517. Limited Waiver of Sovereign Immunity.**

Historical and Statutory Notes

The Section of Findings and Determinations of Band Statute 1085-MLC-31 provides: "The Findings and Determinations of the Band Assembly enacted in Band Statute 1085MLC-30, Section 1-1.1 1 [22 MLBS § 1] are reenacted as applicable provisions of law for each Chapter of law entitled 'Band Statute 1085-MLC-31-39'. The designation '31-39' de notes only various Chapter numbers of the same Band Statute, which are established as the Public Taxation Policy of the Non-Removable Mille Lacs Band of Chippewa Indians."

Band Statute 1085-MLC-31, § 31 provides: "Section 31. Severability. If any provisions of this Chapter, or the application thereof, to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of this Chapter which can be

given effect without the invalid provisions or application and to this end of the provisions of this Chapter are declared severable."

The title of Ordinance 15-11 is: "An ordinance repealing Section 509(a) of Chapter 6 in title 22 (Taxation) of the Mille Lacs Band Statutes Annotated (MLBS) and adopting a new Section 509(a) to enact a tax requiring that fifty cents (\$.50) of each alcoholic drink sold by or at Grand Casino Hinckley be disbursed to the Mille Lacs Band of Ojibwe Government for its use to fund the Band's Alcohol Abuse and Drug Abuse programs, including a Women's Halfway House."

The Preamble to Ordinance 15-11 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of repealing Section 509(a) of Chapter 6 in Title 22 of the Mille Lacs Band Statutes Annotated in its entirety and adopting a new Section 509(a) to enact a tax on each alcoholic drink sold by or at Grand Casino Hinckley (GCH) to require that fifty cents (\$.50) of each alcoholic drink sold by or at GCH be distributed to the Mille Lacs Band of Ojibwe government to fund its Alcohol Abuse and Drug Abuse programs, including a Women's Halfway House."

Cross References

Application of provisions of this chapter to motor vehicle excise tax, *see* 22 MLBS § 402. Payment of tax and filing of returns, *see* 22 MLBS § 213.

§ 501. Reservation of Right.

The Band Assembly hereby fully reserves the right to alter, amend, or increase or decrease taxes imposed herein, or repeal the several provisions of this chapter, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 30.

§ 502. Definitions.

When used in this chapter, unless the context clearly indicates otherwise, the following terms shall have the meaning, respectively, ascribed to them in this section:

- (a) **"Gross Receipts"** means the total amount received, in money, or otherwise, for all sales at retail as measured by the sales price. Gross receipts from sales may, at the option of the taxpayer, be reported on the cash basis as the consideration' is received or on the accrual basis as sales are made.
- (b) **"Person"** means any individual, partner, officer, director, firm, partnership, joint venture, association, cooperative, social club, fraternal organization, municipal or private corporation whether organized for profit or not, estate, trusts, business trusts, receiver, trustee, syndicate, the United States, the state of Minnesota, any political

subdivision of Minnesota, or any other group or combination acting as a unit, and the plural as well as the singular number. As used in the preceding sentence, the term "person" includes, but is not limited to directors and officers of corporations or members of partnerships who, either individually or jointly with others, have the control, supervision or responsibility of filing returns and making payment of the amount of tax imposed by this chapter. "Person" shall also include any agent or consignee of any individual or organization enumerated in this section.

- (c) **"Retailer"** means persons engaged in making sales at retail.
- (d) **"Sale"** includes, but is not limited to each of the following transactions:
 - (1) Any transfer of title or possession, or both, of tangible personal property, whether absolutely, or conditionally, and the leasing of or the granting of a license to use or consume tangible personal property, for a consideration money or by exchange or barter;
 - (2) The furnishing for a consideration of lodging and related services by a hotel, rooming house, tourist court, motel or trailer camp and of the granting of a similar license to use real property other than the renting or leasing thereof, for a continuous period of 30 days or more;
 - (3) The furnishing for a consideration of electricity, gas, water, or steam for use or consumption within this state, or local exchange telephone service and intrastate toll service except such service provided by means of coin operated telephone; the tax imposed on amounts paid for telephone service is a liability of and shall be paid by the person paying for the service. Sales by ' municipal corporations in a proprietary capacity are included in the provisions of this clause. The furnishing of water and sewer services for residential use shall not be considered a sale.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 32.

§ 503. Imposition of General Sales Tax.

There is hereby imposed an excise tax of five percent of the gross receipts from sales and retail, as herein defined, made by any licensed retail vendor organized pursuant to 16 MLBS § 1, on territories governed by the Non-Removable Mille Lacs Band of Chippewa Indians after February 28, 1985. Notwithstanding the foregoing, the tax imposed hereby upon sales at retail through coin-operated vending machines shall be four percent of the gross receipts of such sales.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 20.

Cross References

Capital Improvements Authority, tax exemptions, *see* 14 MLBS § 12.

Public service occupations tax, *see* 22 MLBS §§ 601, 602.

§ 504. Legal Incidence of Tax Imposed.

The legal incidence of the Non-Removable Mille Lacs Band of Chippewa Indians general sales tax on the gross receipts from sales at retail shall be placed upon each retail vendor organized pursuant to provisions of 16 MLBS § 1. Each retail vendor may at the discretion of the Non-Removable Mille Lacs Band of Chippewa Indians-Corporate Commission, shift the economic incidence of said tax forward to any consumer; and any such tax shift shall be considered as consensual. Notwithstanding the preceding, the legal incidence of this tax shall not be construed as falling upon any consumer.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 21.

§ 505. Tax as Debt from Retailer to Band.

The use tax required to be collected by the retailer constitutes a debt owed by the retailer to the Non-Removable Mille Lacs Band of Chippewa Indians and shall be a debt from the retailer to the Corporate Commission recoverable at law in the same manner as other debts.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 22.01.

§ 506. Presumption and Burden of Proof.

It is the purpose for proper administration of provisions of this chapter and to prevent any retailer from evading this tax, it shall be presumed that all gross sales are subject to the tax until the contrary is established. The burden of proving that a sale is not a sale at retail is upon the person makes the sale.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 22.

§ 507. Exemptions from Sales Tax.

The following are specifically exempted from taxes imposed in this chapter:

- (a) The gross receipts from the sale of food products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetable and vegetable products, fruit and fruit products, spice and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products.
- (b) The gross receipt from the sale of prescribed drugs and medicine intended for use, internal or external, in the cure, mitigation, treatment or prevention of illness or disease in human beings and products consumed by humans for the preservation of health, including prescription glasses, therapeutic and prosthetic devices, but not including, cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein.
- (c) The gross receipts from the sale of an existing home or residence, or the construction of a new residence when each is financed in whole or part by the United States, in accordance with 38 U.S.C., §§ 8.01-8.05, as amended.
- (d) The gross receipts from the sale of residential heating fuels in the following manner; all fuel oil, coal, wood, steam, propane gas, and L.P. gas sold to residential customers for residential use; natural gas sold for residential use to customers who are metered and billed as residential users and who use natural gas for their primary source of residential heat, for the billing months of November, December, January, February, March and April; electricity sold for residential use to customers who are metered and billed as residential users and who use electricity for their primary source of residential heat for the billing months of November, December, January, February, March and April.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 23.

Cross References

Gasoline and petroleum products excise tax, see 22 MLBS § 301.

§ 508. Road Building Materials.

Nothing herein shall exempt the gross receipts from sales of road building materials intended for use on roads under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, the construction or repair thereof, whether purchased by the Band or any contractor.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 23.05.

§ 509. Special Surcharge Taxes.

- (a) There is hereby imposed, a special surcharge tax on each alcoholic drink sold by or at Grand Casino Hinckley (GCH) requiring that fifty cents (\$.50) of each drink sold shall be distributed to the Mille Lacs Band of Ojibwe government to fund its Alcohol Abuse and Drug Abuse programs, including a Women's Halfway House. The Commissioner of Finance shall set aside such funds upon his/her receipt of them and place them in a separate account for such purpose.
- (b) There is hereby imposed a special surcharge tax of ten percent on all fines imposed pursuant to lawful authority by any Justice of the Court of Central Jurisdiction. Any said surcharge shall be placed in the Judicial Trust Fund Account, which is hereby created. Expenditures shall be made from said account only as may be authorized by special Revenue Court Order of the Chief Justice of the Court of Central Jurisdiction for the day-to-day administration costs of the Court. In no event shall any such funds be utilized for the benefit of any justice or court personnel, either directly or indirectly.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 24.
Band Ordinance 15-11, § 1.

§ 510. Offenses.

- (a) Any person who is required to keep records or to make returns who shall falsify or fail to keep such records, or falsify or fail to make such returns, shall be deemed guilty of falsifications of records, and upon conviction thereof, shall be fined up to five hundred dollars, and/or sentenced to labor not to exceed 180 days.
- (b) Any person who shall refuse to permit the examination of records by authorized officials of the Band, or shall interfere with the performance of official duty shall be deemed guilty of obstruction of government function, and upon conviction thereof,

shall be sentenced to labor not to exceed 180 days, and/or a fine not to exceed five hundred dollars.

- (c) Any person who in any manner attempts to evade or who aids or abets in the evasion or attempted evasion of any provision of this chapter shall be deemed guilty of evasion, and upon conviction thereof, shall be sentenced to labor not to exceed 180 days, and/or a fine not to exceed five hundred dollars.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 25.

§ 511. Enforcement.

The Commissioner of Finance shall enforce all provisions of this chapter. He may prescribe all rules and regulations not inconsistent with the provisions of this chapter through Commissioner's Order. He may call upon the Solicitor General or any Band law enforcement officer to aid him in the performance of his duties. He may appoint such employees of the Non-Removable Mille Lacs Band of Chippewa Indians as may be required to administer the provisions of this chapter. He may bring injunction proceedings against the distributor or any licensed retailer from acting in a manner inconsistent with the provisions of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 26.

§ 512. Immunity from Self-Incrimination.

No person shall be excused from testifying or from producing, pursuant to a subpoena, any books, paper, records or memoranda in any investigation, upon the grounds that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to criminal prosecution. Any person, who shall testify, shall receive immunity from such prosecution provided that the testimony under oath be the truth, pursuant to a lawful subpoena. No person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 26.02.

Cross References

Self-incrimination, *see* 1 MLBS § 4.

§ 513. Revenue Distribution.

All revenues derived from taxes, penalties, and interest from this chapter shall be deposited in a trust fund account in the name of the "Non-Removable Mille Lacs Band of Chippewa Indians: Taxation Revenue Account" and not be distributed except upon formal Revenue Resolution of the Band Assembly so directing disbursement.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 27.

§ 514. Administrative Expenses.

In no event, shall the expenses of administration of the provisions of this chapter exceed five percent of the gross receipts of the taxes imposed herein.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 26.01.

§ 515. Court of Central Jurisdiction-Judicial Review.

The Court of Central Jurisdiction is hereby granted exclusive subject matter jurisdiction over any cause of action which may arise from the implementation of provisions of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 28.

Cross References

Subject matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 516. Payment or Bond Prerequisite to Suit.

Any person who shall have a cause of action arising from any provisions of this chapter may petition the Court only upon first payment of any tax due or the posting of a bond in the amount due in favor of the Taxation Revenue Account as a means that he/she intends to pay the tax if the Court so requires.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 28.01.

§ 517. Limited Waiver of Sovereign Immunity.

- (a) The Band Assembly hereby waives sovereign immunity to be sued only in the Court of Central Jurisdiction in any seizure of property matter pursuant to provisions of this chapter. However, any such action shall only be directed against the Commissioner of Finance, in his/her official capacity in order to challenge any seizure action.
- (b) Any said limited waiver of sovereign immunity shall be valid only in the Court of Central Jurisdiction, and subject to further limitations in subsections (c) and (d).
- (c) Any and all seizure causes of action which arise pursuant to this chapter shall be limited to actions against the Commissioner of Finance in his official capacity for an order returning any seized goods.
- (d) All other causes of action which arise pursuant to this chapter shall be limited in relief to declaratory or injunctive measures and no damages, monetary or otherwise, including but not limited to attorney fees shall be permitted.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-31, § 29.

CHAPTER 7

PUBLIC SERVICE CONTRACTS OCCUPATION TAX

Section

601. Imposition of Public Service Contracts Occupations Tax.

602. Payment.

Historical and Statutory Notes

The Section of Finding and Determinations of Band Statute 1085-MLC-36 provides: "The Findings and Determinations of the Band Assembly enacted in Band Statute 1085MLC-30 Section 1-1.1 1 [22 MLBS § 1] are reenacted and applicable provisions of law for each chapter of law entitled 'Band Statute 1085-MLC-31-39'. The designation '3 1-39' de notes only various chapter numbers of the same Band Statute which are established as the Public Taxation Policy of the Non-Removable Mille Lacs Band of Chippewa Indians."

Band Statute 1085-MLC-36, §§ 51 and 63 provide: "Section 51. Declaration of band policy with regard to public service contracts. It is hereby declared by the Band Assembly in and for the Non-Removable Mille Lacs Band of Chippewa Indians that all public service contracts shall be awarded to businesses organized pursuant to Band Statute 1077-MLC-16. However, in lieu of fulfillment of this policy, it is necessary to protect the economic security of the Band that the Band act as the purchasing agent on all contracts awarded to businesses organized pursuant to the laws of the state of Minnesota and any of its political subdivisions, where such contract will execute all provisions exclusively on territories subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. Further, the Band Assembly is cognizant of the severe economic conditions and wide spread unemployment that exists amongst our sovereign people, and therefore, place a moral obligation upon all contractors for public service projects to assist in relieving such economically depressed conditions. Therefore, to effectuate the policies entered herewith, this chapter shall be liberally construed and the taxes imposed in chapter 31, Section 20 [now 22 MLBS § 503] shall apply to all purchases of each branch of government of the Non-Removable Mille Lacs Band of Chippewa Indians, its independent and semi-independent commissions and any other political subdivision thereof."

"Section 63. Severability. If any provision of this chapter, or its application to any person or circumstances is held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances is not affected."

Cross References

Payment of tax and filing of returns, *see* 22 MLBS § 213.

Procurement, *see* 7 MLBS § 1.

§ 601. Imposition of Public Service Contracts Occupations Tax.

There is hereby imposed a Public Service Occupations Tax in an amount equal to one half of one percent of the total contractual award. Said tax shall not be in lieu of taxes imposed pursuant to 22 MLBS § 503 on the gross receipts from materials and supply purchases necessary to fulfill any and all contractual obligations. Any contractor shall not have the options of complying with the taxation provisions of 22 MLBS § 503 or the provisions of this section. In the event, any contractor shall be liable for taxation imposed by 22 MLBS § 501, all material and supply purchases shall be made by the Band and in the name 'Non-Removable Mille Lacs Band of Chippewa Indians' and resold at retail/wholesale cost, whichever is applicable, and therefore exempt from general sales tax imposed by any political subdivision of the United States of America, or the state of Minnesota and any of its political subdivisions

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-36, § 50.

Cross References

Capital Improvements Authority, tax exemptions, *see* 14 MLBS § 12.

Employment Rights Fee, *see* 18 MLBS § 417.

§ 602. Payment.

All said occupation taxes shall become due and payable from the proceeds of each progress payment in proportional amounts within three days after receipts by the contractor as the work proceeds throughout the completion of the contracts. A lien for any said taxes is hereby imposed upon the progress payment. The occupation tax shall be paid to the Commissioner of Finance and placed in the existing account in the name Non-Removable Mille Lacs Band of Chippewa Indians Taxation Revenue Account. Said funds not to be distributed except upon formal Revenue Resolution of the Band Assembly so directing disbursement.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-36, § 50.01.

CHAPTER 8

PERSONAL INCOME TAX

Section

701. Imposition of Income Tax.

Historical and Statutory Notes

The Section of Findings and Determinations of Band Statute 1085-MLC-34 provides: "The Findings and Determinations of the Band Assembly enacted in Band Statute 1085- MLC-30 Sections 1-1.1 1 [22 MLBS §1] are reenacted as applicable provisions of law for each Chapter of law entitled 'Band Statute 1085-MLC-31-39'. The designation '31-39' denotes only various Chapter numbers of the same Band Statute, which are established as the Public Taxation Policy of the Non-Removable Mille Lacs Band of Chippewa Indians."

Cross References

Housing Authority, tax exemption for obligations, *see* 12 MLBS § 20.

Payment of tax and filing of returns, *see* 22 MLBS § 213.

§ 701. Imposition of Income Tax.

There is hereby imposed an income tax on all personal income earned by the members of the Non-Removable Mille Lacs Band of Chippewa Indians and generated from civil service employment with the Non-Removable Mille Lacs Band of Chippewa Indians for the purpose of preemption of any income tax that may now or hereinafter be imposed by the state of Minnesota or any political sub-division thereof in the amount of one dollar.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-34, § 48.

Cross References

Government employees, *see* 6 MLBS § 1.

CHAPTER 9

ESTATE TAX

Section

801. Imposition of Estate Tax.

Historical and Statutory Notes

The Section of Findings and Determinations of Band Statute 1085-MLC-35 provides: "The Findings and Determinations of the Band Assembly enacted in Band Statute 1085MLC-30, Sections 1-1.1 1 [22 MLBS § 1] are reenacted as applicable provisions of law for each Chapter of law entitled 'Band Statute 1085-MLC-31-39'. The designation '31-39' denotes only various Chapter numbers of the same Band Statute, which are established as the Public Taxation Policy of the Non-Removable Mille Lacs Band of Chippewa Indians."

Cross References

Payment of tax and filing of returns, *see* 22 MLBS § 213.

§ 801. Imposition of Estate Tax.

There is hereby imposed, an estate tax upon the transfer of estates of decedents who are members of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians in an amount equal to one one-hundredth of a percent of the total value of the estate, for the purpose of preemption of any estate tax that may now or hereinafter be imposed by the state of Minnesota or any political subdivision

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-35, § 49.

TITLE 23 - PROHIBITED DRUGS

Section

1. Incorporation by Reference.
2. Definitions.
3. Possession, Sale, or Manufacture; Fraud.
4. Possession, Sale, or Manufacture for Use.
5. Drugs Consumed by Minors.
6. Administration of Substance with Intent to Injure or Facilitate Crime.
7. Possession within Motor Vehicle.
8. Petition to Lift Exclusion.
9. Court of Central Jurisdiction Subject Matter Jurisdiction.
10. Automatic Appeal.

Cross References

Driving under influence of alcohol or controlled substance, *see* 19 MLBS § 405.

Exclusion, *see* 2 MLBS § 201.

Use of vessel while under influence of drugs or alcohol, *see* 20 MLBS § 308.

§ 1. Incorporation by Reference.

(a)

- (1) For the purpose of enforcing 23 MLBS § 7, the Band Assembly hereby creates Title 23 of the Mille Lacs Band Statutes Annotated. Title 23 shall be entitled "Prohibited Drugs". It is the intent of the Band Assembly to incorporate the following provisions of the Statutes of the State of Minnesota, Chapter 152- Prohibited Drugs as Title 23 of the Mille Lacs Band Statutes Annotated. The intent of the Band Assembly is to exercise concurrent criminal jurisdiction with the State of Minnesota pursuant to the provisions of 18 USC 1162 to protect the general health, welfare and safety of those persons who reside on lands subject to the jurisdiction of the Band. The following provisions of Minnesota Statutes Chapter 152 are hereby incorporated by reference into this title:

- (i) Section 152.01 – Definitions
- (ii) Section 152.02 - Schedule of Controlled Substances Section 152.09 - Prohibited Acts
- (iii) Section 152.10 - Sales, Persons Eligible
- (iv) Section 152.12 - Doctors may Prescribe

- (v) Section 152.12, Subdivision 6 - THC Therapeutic Research Act/Exemption from Criminal Sanction Section 152.19 – Forfeitures
- (2) All subsections within an above sectional listing shall apply.
- (3) The following provisions of Minnesota Statutes, Chapter 152, Sections 152.01 - Definitions, Section 152.02 - Schedules of Controlled Substances, Section 152.10 - Sales, Persons Eligible, Section 152.11 - Written or Oral Prescription, Requisites, and Section 152.12 - Doctors May Prescribe, shall be incorporated by reference into this title for the purposes of enforcement. Provisions of Section 152.19 - Forfeiture are applicable.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, § 35.10.
Band Statute 1164-MLC-6, § 52.04.

Cross References

Seizure and confiscation of substances and vehicles, *see* 19 MLBS § 503.
Seizure and confiscation of substances and watercraft, *see* 20 MLBS § 405.

§ 2. Definitions.

For the purpose of enforcement of this title, the word "**sell**" shall mean distribution in any manner, and includes any exchange from one party to another, and is not necessarily limited to monetary exchanges.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §52.06.

§ 3. Possession, Sale, or Manufacture; Fraud.

Any person who shall knowingly and intentionally possess, sell, distribute, manufacture, cultivate, compound or possess any narcotics or dangerous drugs except those narcotics or dangerous drugs lawfully possessed, sold, manufactured, prepared, cultivated, compounded, processed, or obtained, or attempt to obtain any narcotic or dangerous drug by fraud, deceit, misrepresentation or subterfuge or falsely identifies himself/herself as a person authorized by law, to obtain a narcotic or dangerous drug, or use forged, altered or fictitious prescriptions, or use a fake name or address on a prescription, or conceal any material fact, or alter or change any label on a narcotic or dangerous drug, drug package or receptacle by affixing a false or forged label or otherwise misrepresenting a package or container containing a narcotic or dangerous

drug, shall be deemed guilty of an offense and upon conviction thereof, may be sentenced to incarceration or labor for a period not to exceed 180 days, and/or a fine not to exceed \$5000.00, and/or be excluded from all lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians for a period of time at the discretion of the Court.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §52.

Cross References

Fraud, *see* 24 MLBS §1154.

Government employees, summary dismissal, *see* 6 MLBS §103.

§ 4. Possession, Sale, or Manufacture for Use.

Any person who shall knowingly and intentionally possess, sell, manufacture, distribute, cultivate, compound or possess any narcotic or dangerous drug for personal use or the use of any other person shall be deemed guilty of an offense, and upon conviction thereof, may be sentenced to incarceration or labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and/or be excluded from all lands under jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians for a period of time at the discretion of the Court.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §52.01.

Cross References

Government employees, summary dismissal, *see* 6 MLBS §103.

§ 5. Drugs Consumed by Minors.

Any person who shall knowingly and intentionally possess, sell, distribute, manufacture, cultivate, compound or possess any narcotic or dangerous drug that is unlawfully consumed by a minor person, shall be deemed guilty of an offense, and up on conviction thereof, may be excluded from all lands under jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians for a period of time at the discretion of the Court. It shall not be a defense that any said person was unaware of the identity or age of any minor consumer or any illegal narcotic or dangerous drug.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §52.02.

Cross References

Contributing to delinquency of minor, *see* 24 MLBS §1260.

Juvenile justice, *see* 8 MLBS §101 et seq.

Minors in need of care, *see* 8 MLBS §201 et seq.

§ 6. Administration of Substance with Intent to Injure or Facilitate Crime.

Any person who administers or causes another to take any poisonous, stupefying, overpowering, narcotic or anesthetic substance with the intent thereby to injure or to facilitate the commission of a crime, shall be deemed guilty of an offense, and upon conviction thereof, may be excluded from all lands under the jurisdiction of the Non- Removable Band of Chippewa Indians for a period of time at the discretion of the Court.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §52.03.

§ 7. Possession within Motor Vehicle.

- (a) Any person who is the owner of a private motor vehicle, or the driver of a motor vehicle if the owner is not present, and who possesses on his person or knowingly keeps or allows to be kept in a motor vehicle within the area of the vehicle normally occupied by the driver or passengers any marijuana or controlled drugs, shall be deemed guilty of an offense, and upon conviction thereof, may be sentenced to incarceration or labor for a period of time not to exceed 180 days, and/or a fine not to exceed \$500.00, provided that the introduction of said controlled substance on lands under the jurisdiction of the Band is not for distribution purposes. The judge or jury shall specifically enter a finding of intent based upon the evidence introduced at trial. Should the jury enter a finding of intent to distribute, upon conviction thereof, a sentence of exclusion from all lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians for a period of time at the discretion of the Court shall be imposed.
- (b) The area of the vehicle shall not include the trunk of the motor vehicle when such vehicle is equipped with a trunk or another area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passenger. The existence of more than .05 ounces of marijuana in the trunk of any motor vehicle shall be prima facie evidence of an intent to distribute.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §35.09.

Band Statute 1164-MLC-6, §52.05.

Cross References

Search without warrant, *see* 24 MLBS §4108.

Seizure and confiscation of substances and vehicles, *see* 19 MLBS §503.

Seizure and confiscation of substances and watercraft, *see* 20 MLBS §405.

§ 8. Petition to Lift Exclusion.

In the event that any person convicted of a violation of any provisions of 23 MLBS §§ 4-7 is excluded from lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, he/she shall have the right to petition the presiding trial judge every 180 days to lift their exclusion. In any event a hearing shall be held twice each year to determine if any exclusion shall be lifted.

History and Statutory Notes

Source:

Band Statute 1164-MLC-6, §52.07.

§ 9. Court of Central Jurisdiction Subject Matter Jurisdiction.

The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from this title. Nothing in this title shall be construed as a waiver of sovereign immunity of the Non-Removable Mille Lacs Band of Chippewa Indians in any state or federal court of competent jurisdiction. Associate Justices of the Court of Central Jurisdiction shall have original jurisdiction over all causes of action which arise from any provisions of this title. A Criminal Division is hereby created in the Court of Central Jurisdiction to hear causes of action arising from this title.

Historical and Statutory Notes

Source:

Band Statute 1097-MLC-52, §38.

Band Statute 1164-MLC-6, §59.

Cross References

Subject matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS §111.

§ 10. Automatic Appeal.

In all cases under this title, all convictions shall be subject to automatic appeal to the full Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §52.07.

Cross References

Appeals, *see* 24 MLBS §2501.

TITLE 24 - JUDICIAL PROCEEDINGS

<u>Chapter</u>	<u>Section</u>
1. Civil Causes of Action	1
2. Criminal Causes of Action	1001
3. Procedures	2001

CHAPTER 1

CIVIL CAUSES OF ACTION

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	1
2. Contracts	101
3. Actions for Harmful Conduct	201

Historical and Statutory Notes

The Preamble of Band Statute 1144-MLC-5 provides:

"WHEREAS, it is necessary to develop a written code for adjudication of wrongs of a civil nature that occur on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, and

"WHEREAS, a democratic form of government such as is enacted and operational for the benefit of the Non-Removable Mille Lacs Band of Chippewa Indians requires that laws be implemented to establish

equal standards for the conduct of all persons subject to the civil jurisdiction of the Band in the interest of justice, and

"WHEREAS, equal justice is the primary ingredient of any democracy, and

"WHEREAS, it is the desire of the Band Assembly to retain the customs and traditions of the Non-Removable Mille Lacs Band of Chippewa Indians which, since time immemorial had been unwritten codes to be passed orally from generation to generation, "NOW THEREFORE, Be it enacted by the Band Assembly."

The Title of Band Ordinance 18-14 is "An Ordinance amending Subchapter II entitled 'Department of Justice' of Title 24 of the Mille Lacs Band Statutes Annotated to authorize the Solicitor General to perform background investigations for employment and election purposes."

The preamble of Band Ordinance 18-14 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Subchapter II entitled 'Department of Justice' of Title 24 of the Mille Lacs Band Statutes Annotated to authorize and empower the Solicitor General to perform background investigations for employment and election purposes."

Cross References

Civil actions not merged into criminal offenses, *see* 24 MLBS § 1003.

SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 1. Purpose.**
- 2. Exclusive Original Jurisdiction.**
- 3. Concurrent Jurisdiction.**
- 4. Application of Uniform Commercial Code of State of Minnesota.**
- 5. Truth in Lending Act.**
- 6. Consumer Protection Laws of State of Minnesota.**

§ 1. Purpose.

The purpose of this chapter is:

- (a) To promote the general welfare, preserve and maintain justice, and to accord equal rights, equal protection and equal opportunity for all persons under the civil jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians by enacting a written law to establish standards for civil causes of action.
- (b) To exercise inherent powers of government essential to the attributes of sovereignty by regulating the civil affairs of persons who enter or reside on lands subject to the

jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians and to provide a forum for the redress of civil grievances and disputes between persons located on said lands.

- (c) To provide a written code of civil law of the Non-Removable Mille Lacs Band of Chippewa Indians which may be invoked in the courts of any jurisdiction exterior to the Band, by any Band member who may be subject to the civil jurisdiction, of the State of Minnesota pursuant to the provisions of 28 USC 1360.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I, § 1.

§ 2. Exclusive Original Jurisdiction.

- (a) The Court of Central Jurisdiction is hereby conferred exclusive original jurisdiction over all civil causes of action, involving any person, where said grievance or dispute arises concerning any property, personal or otherwise, located on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, except as otherwise provided in paragraph (b) below.
- (b) The Court of Central Jurisdiction shall have exclusive original jurisdiction over all civil matters in which the Non-Removable Mille Lacs Band of Chippewa Indians, any of its political subdivisions or entities, or its officers, appointees or employees are parties in their official capacity; provided that the Court of Central Jurisdiction shall have no jurisdiction over any such civil matter if (1) the Band or any of its political subdivisions or entities, by written contract, consents to the jurisdiction of any other court or courts of competent jurisdiction, to the exclusion of the Court of Central Jurisdiction, and waives its sovereign immunity only to this extent and (2) the Band Assembly adopts a resolution ratifying the contract. Band Assembly ratification of a contract in which a political subdivision or entity of the Band waives that subdivision or entity's sovereign immunity shall not be construed as a waiver of the Band's own sovereign immunity. Nothing herein shall be construed as a waiver of sovereign immunity of the Band unless specifically authorized in accordance with Band law or by specific Band statute.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I, § 2.
Band Ordinance 08-93.

Cross References

Subject matter jurisdiction, Court of Central jurisdiction, *see* 5 MLBS § 111.

§ 3. Concurrent Jurisdiction.

The jurisdiction invoked by this chapter over any person, cause of action or subject shall be concurrent with any valid jurisdiction over the same of the Courts of the United States; provided, however, this chapter does not recognize, grant or cede jurisdiction to any other political or governmental entity.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I, § 3.

Cross References

Personal jurisdiction, *see* 5 MLBS § 113.

Subject matter jurisdiction, *see* 5 MLBS § 111.

§ 4. Application of Uniform Commercial Code of State of Minnesota.

Pursuant to the provisions of 18 MLBS §301, the provisions of Minnesota Statutes Chapter 336, the Uniform Commercial Code, shall apply to any applicable civil causes of action which arise pursuant thereto.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I, § 17.

Cross References

Acceptance and counteroffer, *see* 24 MLBS § 107.

§ 5. Truth in Lending Act.

The provisions of the laws of the United States of America relative to truth in lending as set forth in 15 USC 1601, et seq. shall apply to all persons who are creditors and lessors as defined by the act. The justices of the Court of Central Jurisdiction shall be bound thereby to the provisions of said act.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I, § 18.

Cross References

Banks and banking, *see* 17 MLBS § 1 et seq.
Creditors' remedies, *see* 24 MLBS § 3301 et seq.
Commercial practices, *see* 18 MLBS § 1 et seq.

§ 6 Consumer Protection Laws of State of Minnesota.

The Consumer Protection Laws of the State of Minnesota shall apply as the Consumer Protection Laws of the Non-Removable Mille Lacs Band of Chippewa Indians. The justices of the Court of Central Jurisdiction shall be bound thereby to enforce the provisions of said Consumer Protection Laws.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I, § 19.

SUBCHAPTER 2

CONTRACTS

Section

101. Definition of Contract.
102. Legal Requirements.
103. Offer.
104. Interpretation.
105. Time for Performance.
106. Persons Capable of Contracting.
107. Essential Elements of Consent.
108. Withdrawal of Offer.
109. Object of Contract.
110. Consideration.
111. Formation of Contracts: Expressed or Implied.
112. Oral or Written Contracts: Statue of Frauds.
113. Public Auctions.
114. Parolee Evidence Rule.
115. Explanation or Supplementation of Terms.
116. Unlawful Contract Provisions.
117. Defenses to Judicial Enforcement of Contracts.
118. Rights and Obligations of Non-Parties.
119. Breach of Contract.
120. Remedies of Breach of Contract.

§ 101. Definition of Contract.

A contract is an agreement, upon sufficient consideration, to do or not to do a particular thing. It may be oral or written, provided however that oral contracts as described in 24 MLBS § 112 are not enforceable.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 4.

§ 102. Legal Requirements.

The legal requirements necessary in forming a contract are:

- (a) Two or more parties, all of whom are legally capable of making a contract.
- (b) An offer by one party to do or refrain from doing a certain thing.
- (c) Acceptance of the offer by words or actions of the other party.
- (d) Consideration, or benefit, to one party in payment for the promise or actions of the other.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 4.01.

§ 103. Offer.

- (a) An offer is a proposal by one party to another party, showing a present intention to contract and giving the other party the right to accept to that the contract may be created.
- (b) To qualify as an offer, the words or acts shall meet the following basic requirements:
 - (1) The offer must indicated a present serious intention to contract.
 - (2) The essential terms of the offer must be definite and certain.
 - (3) The offer must be communicated to an identified party.
- (c) The four essential terms identified in paragraph (2) of subsection (b) are parties, subject matter, time for performance and price.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., §§ 4.01.01-4.01.03.

§ 104. Interpretation.

A contract is to be interpreted according to the law and usage of the place where it is to be performed or, if it does not indicate a place or performance, according to the law and usage of the place where it is made, unless otherwise stated in the contract.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 4.02.

§ 105. Time for Performance.

If no time is specified for the performance of an act, a reasonable time is allowed. If the act is capable of being done instantly, such as payment of money, it must be performed immediately when due and ascertained.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 4.03.

§ 106. Persons Capable of Contracting.

- (a) All persons are capable of contracting except minors under the age of sixteen and persons of unsound mind. Minors have only such capacity as shall be specified in the Band Statutes relating directly to them.
- (b) The contract of a minor if made while he is under the age of sixteen may be disaffirmed by the minor himself either before his majority or within one year's time afterwards.
- (c) A minor cannot disaffirm a contract otherwise valid to pay the reasonable value of things necessary for his support or that of his family entered into by him when not under the care of a parent or guardian able to provide for him or them.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 5.

Cross References

Children and families, *see* 8 MLBS § 1 et seq.

§ 107. Essential Elements of Consent.

- (a) Consent of the parties to a contract must be free, mutual and communicated by each to the other.
- (b) Consent which is not free is not void but voidable and may be rescinded in the manner prescribed by the statutes on revision (24 MLBS § 117). An apparent consent is not real or free and is voidable when obtained through duress, fraud, undue influence or mistake.
- (c) An offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances unless the offer clearly and expressly indicates, by its language or circumstances involved, that a specific method of acceptance is required.
- (d) Consent is deemed to be fully communicated between the parties as soon as the party accepting the offer has put his acceptance in the course of transmission to the party making the offer in conformity with subsection (c).
- (e) A definite expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms. Any acceptance that materially changes the offer is a counteroffer that must be accepted by the original offeree to form a contract, except for sales contracts that are subject to interpretation under the Uniform Commercial Code of the State of Minnesota.
- (f) A voluntary acceptance of the benefit of a transaction is equivalent to consent to all the obligations arising from it so far as the facts are known, or ought to be known, to the party accepting.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 6.

Cross References

Applicability of Uniform Commercial Code, *see* 18 MLBS §301; 24 MLBS § 4.

§ 108. Withdrawal of Offer.

- (a) An offer may be withdrawn at any time before its acceptance is communicated to the party making the offer, but not afterwards with the exception of option contracts or in the case of detrimental reliance.
 - (1) When an offeree gives something of value in exchange for a promise by the offeror not to revoke an outstanding contract, this shall be called an option contract. The option shall be treated as a contract in which the offeror bargains away his or her right to revoke the offer. If the option agreement does not specify a time limit, the court shall require the offeror to hold the contract open to the offeree's acceptance for a reasonable period of time.
 - (2) When the offeree relies upon an outstanding offer and as a result, suffers harm or loss this shall constitute detrimental reliance. Detrimental reliance by the offeree on an outstanding offer, where the reliance was reasonable and foreseeable by the offeror, shall make the offer irrevocable for a reasonable period of time.
- (b) An offer is withdrawn by the communication of notice of withdrawal by the party making the offer to the other party, and received by him, in the manner prescribed for communication of consent and acceptance, before his acceptance has been communicated to the former; or, by the lapse of time prescribed in such offer for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of acceptance; or beginning of performance if the reasonable method of acceptance; or, by the failure of the acceptor to fulfill a condition precedent to acceptance; or by the death or insanity of the offeror before acceptance of the offer; or by the supervening illegality of the proposed contract.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., §§ 6.05, 6.06.

§ 109. Object of Contract.

- (a) The object of a contract is the thing which the party receiving the consideration agrees to do or not to do.
- (b) The object of a contract must be lawful when the contract is made and possible and capable of being determined by the time the contract is to be performed.
- (c) Where a contract has only a single object and such object is unlawful in whole or in part, or wholly impossible of performance, or so vaguely expressed as not to be wholly ascertainable, the entire contract is void.

- (d) Where a contract has several distinct objects, one or more of which are lawful and one or more of which are unlawful in whole or in part, the contract is void as to the unlawful objects and valid as to the rest, if performance of the contract is possible after the exclusion of the unlawful part or parts.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 7.

§ 110. Consideration.

- (a) Consideration is the price bargained for and paid for a promise. It may consist of an act, a forbearance, or a return promise.
- (b) The test of a sufficient consideration is whether the act, forbearance, or return promise results in a benefit to the promisor or a detriment to the promisee.
- (c) Consideration must be of some legal value. If there is no detriment or benefit, then the agreement is not enforceable. However, the amount of value is irrelevant. The court will uphold and enforce an agreement where there is consideration and will not impose its view as to whether the consideration was adequate or fair.
- (d) No preexisting duty imposed by law or contract shall be consideration on a subsequent contract.
- (e) The following shall be substituted for consideration.
 - (1) A promise to perform a legal duty created in the past transaction and owing to the promisee is enforceable without new consideration.
 - (2) If the promisee reasonably relied on promisor's promise to his detriment or forbearance, the contract will be enforced.
- (f) A written instrument is presumptive evidence of a consideration.
- (g) The burden of proof of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., §§ 4.04, 8.

§ 111. Formation of Contracts: Expressed or Implied.

A contract is either expressed or implied. An expressed contract is one the terms of which are stated in words. An implied contract is one the existence and terms of which are manifested by conduct of the parties.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 9.

§ 112. Oral or Written Contracts: Statute of Frauds.

- (a) All contracts may be oral except such as are specially required by statute to be in writing.
- (b) The following contracts shall not be enforceable by action unless the same or some memorandum thereof be in writing and subscribed by the party to be charged or his agent, thereunto authorized by law.
 - (1) An agreement that by its terms is not to be performed within a year from the making thereof.
 - (2) An agreement made upon consideration of marriage, other than a mutual promise to marry.
 - (3) An agreement for the sale of real estate or an interest therein or lease of the same for a period longer than a year, but this does not abridge the power of the Court of Central Jurisdiction to compel specific performance of any agreement for the sale of real estate in case of part performance thereof.
 - (4) A contract of sale or to sell any personal property of the value of \$500 or upward unless the buyer shall actually receive and accept part of the personal property sold or contracted, or give something in earnest or part payment to bind the bargain. These provisions apply to every sale or contract for sale of personal property.
- (c) Where a contract which is required to be in writing is prevented from being put into writing by the fraud or deceit of a party thereto, any other party who is prejudiced by such fraud may enforce it against the fraudulent party.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., §§ 9.01, 10.

§ 113. Public Auctions.

Where a sale is made by public auction of any real or personal property, an entry by the auctioneer or clerk of sale, in his sale book at the time of the kind of property sold and description thereof sufficient for identification, the terms of sale, the price, and the name or names of the purchaser or person on whose account the sale is made is sufficient for memorandum to satisfy the requirements found in 24 MLBS § 115.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 10.02.

§ 114. Parolee Evidence Rule.

- (a) In order to simplify the judicial interpretation of contracts by having a single, clear source of proof concerning the terms of the contract, the Parole Evidence Rule as set forth in subsection (b) shall be exercised in the Court of Central Jurisdiction.
- (b) The Parole Evidence Rule: Where the parties to a contract express their agreement in writing with the intent that it contain the complete and final expression of their bargain, any other expressions, whether written or oral made prior to or concurrent with the writing are inadmissible to change the terms of the writing.
- (c) The parole Evidence Rule shall only apply when there is a writing that is intended to be the complete and final expression of the bargain. In the event that the writing is not intended to be the complete and final expression of the contract, then other expressions whether oral or written are admissible even if they vary or contradict the terms of the writing.
- (d) The parole Evidence Rule shall only apply to evidence of agreements which change the final written expression. Evidence concerning oral or written agreements shall be admissible to aid in interpreting rather than changing the terms of the bargain. The party seeking to admit the evidence, however, must first produce evidence that the writing is ambiguous.
- (e) The parole Evidence Rule shall not apply to situations in which the agreement itself is being challenged. Evidence concerning other oral or written expressions shall be admissible to show that no contract existed or that the entire agreement is unenforceable.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 13.

§ 115. Explanation or Supplementation of Terms.

Terms which are set forth in writing, intended by the parties as a final expression of their agreement with respect to such terms as are included therein, may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

- (a) By evidence of prior course of dealing between the parties; and
- (b) By evidence of terms as they are defined by the common usage particular to the subject of the contract; or
- (c) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 10.03.

§ 116. Unlawful Contract Provisions.

- (a) All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud or willful injury to the person or property of another or from violation of law whether willful or negligent, are against the public policy of the Non-Removable Mille Lacs Band of Chippewa Indians and shall be void.
- (b) Every contract in which the amount of damage or compensation for the breach of an obligation is determined in anticipation thereof is void to that extent, except the parties may agree therein upon an amount presumed to be the damage for breach in cases where it would be impractical or extremely difficult to fix the actual damages.
- (c) Every provision in a contract restricting a party from enforcing his rights under it by usual legal proceedings in the Court of Central Jurisdiction or limiting his time to do so, is void.
- (d) Every contract restraining exercise of a lawful profession, trade or business is void to the extent, except:
 - (1) One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within a specified reservation or part thereof, so long as the buyer or person deriving title to the goodwill from him carries on a like business therein;

- (2) Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same reservation, or part thereof, where the partnership business has been transacted;
- (3) An employee may agree with an employer at the time of employment or at any time during such employment not to engage directly or indirectly in the same business or profession as that of his employer for any period not exceeding five years from the date of such agreement or within the boundaries of the same reservation.
- (e) Usury is the exaction of interest or service charges or deferred payment on a sale of goods on a loan of money which interest or service charge is higher than the rate established by the laws of the State of Minnesota for similar transactions. Such a usurious contract is illegal and void.
- (f) The law of the Non-Removeable Mille Lacs Band of Chippewa Indians will aid neither party to an illegal contract. If it is executory, neither party may enforce it. If executed, the Court of Central Jurisdiction shall not permit revision and recovery of what was given in performance.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 11.

§ 117. Defenses to Judicial Enforcement of Contracts.

The following defenses to judicial enforcement of contracts shall be recognized in the Court of Central Jurisdiction:

- (a) The lack of legal capacity to contract shall be an available defense to judicial enforcement of contracts. Nothing herein shall relieve minors of their right to affirm the provisions of a contract when they come of age or in the case of mentally incompetent persons when they become competent. Persons who lack legal capacity in matters where they affirm said contract shall be bound by the provisions of said contract even if they were unaware of the fact that the contract was previously voidable. In all cases, minors and persons who are mentally incompetent shall be liable for the reasonable value of any necessities for sustaining life that may be conferred on them pursuant to the provisions of their contracts.
- (b) Failure to comply with the Statute of Frauds (24 MLBS § 112) shall be an available defense to judicial enforcement of contracts. The Statute of Frauds shall be liberally construed so as to limit the substantial loss of property or money simply because a person failed to put an otherwise valid agreement into writing.

- (c) The illegality of the contract shall be an available defense to judicial enforcement of contracts. Contracts in which either the subject matter of the contract or the purpose of the contract is illegal are void and unenforceable in regard to the illegal portion of the contract only.
- (d) Fraud or duress shall be an available defense to judicial enforcement of contracts. Where a party signs a contract or gives oral assent based upon a false impression of the contract terms created by the other party, the contract shall be voidable by the innocent party. Where the consent of one party is obtained by force or threat of force against the party or members of the party's family, the contractual obligations of the victim are voidable. This shall be termed duress.
- (e)
 - (1) Unconscionability of a contract shall be a defense to judicial enforcement of contracts. The unconscionability of contract doctrine shall work to protect against one-sided bargains, called contracts of adhesion, in which one party with little or no bargaining power is subjected to oppressive terms by the other party. The Court of Central Jurisdiction shall consider the relative bargaining strength of the parties, economic justification for the terms, and injury to the party or to the public policy of the Non-Removable Mille Lacs Band of Chippewa Indians if the terms of the contract are enforced.
 - (2) It shall be the duty of the Court of Central Jurisdiction to prevent oppression and/or surprise upon one party to the contract by refusing to enforce contract provisions containing warranty disclaimers, waivers of Statute of Limitations or of all defenses, disclaimers of liability or other unreasonable terms or requirements. Obscure or technical language in the contract which the party is obviously unable to comprehend shall also be justification for refusal to enforce the provisions of said contract.
 - (3) If the court finds a contract or any part of a contract to be unconscionable, the court may refuse to enforce the contract at all, or refuse to enforce the unconscionable terms or limit the enforcement of the terms in order to avoid the oppressive result.
- (f) Mistake or ambiguity in the provisions of a contract shall be a defense to judicial enforcement of contracts. The standard rules of contract law regarding mistake or ambiguity shall be utilized in the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 12.

§ 118. Rights and Obligations of Nonparties.

- (a) The rights and obligations of nonparties to any contract shall be recognized in the Court of Central Jurisdiction. A non-party shall be any person who was neither the offerer nor the offeree at the time that a contract was formed. The Court of Central Jurisdiction shall recognize three types of nonparties: the intended third-party beneficiary, the assignee of rights, and the delegate of duties.
- (b) The legal status of intended third-party beneficiaries shall arise at the formation stage of the original contract. The legal status of assignees and delegates, shall arise subsequent to the formation stage, when either or both of the original parties seeks to transfer rights or assignments and/or to delegate duties to a third party.
- (c) A contract made expressly for the benefit of a third person may be enforced by him at any time before the parties rescind such contract.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., §§ 5.03, 14.

§ 119. Breach of Contract.

- (a) The contract law of the Non-Removable Mille Lacs Bands of Chippewa Indians requires that the parties to a contract perform all of their promises pursuant to the provisions of said contract. When one party does not perform a promise pursuant to the terms of the contract, the other party shall have a breach of contract cause of action in the Court of Central Jurisdiction. However, not every breach of a promise made in a contract by one party shall automatically entitle the other party to judicial enforcement of the provisions of said contract. The breach may be justifiable as provided hereafter.
- (b) The Court of Central Jurisdiction shall recognize the following as excuses or defenses for the breach of a contract, and said excuses shall not be exclusive.
 - (1) Impossibility of performance of the provisions of a contract.
 - (2) Supervening illegality.
 - (3) The other contracting parties prior breach of the provisions of a contract.
 - (4) The waiver of non-performance of the provisions of a contract by the other contracting party.
 - (5) A later change of the agreement by the parties.

- (c) A breach of contract cause of action shall exist in the Court of Central Jurisdiction when a party refuses to perform, fails to perform, or defectively performs a contractual obligation which is due and which has not been excused or discharged.
- (d) In the event the breach of contract is substantial or material, the contract obligations of the non-breaching party may be discharged and the non-breaching party may no longer have to perform his or her contractual obligations.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., §15.

§ 120. Remedies for Breach of Contract.

The following remedies for breach of contract shall be available to any party in a breach of contract matter:

- (a) The Court of Central Jurisdiction may award monetary damages as a remedy aimed at making good the losses of the non-breaching party. Only damages which are consequential, foreseeable, unavoidable and certain shall be recoverable.
- (b)
 - (1) The Court of Central Jurisdiction may award specific performance as a remedy in which the breaching party is ordered to perform the contract according to its exact terms. In the event the party willfully disobeys a specific performance order of the court, he/she may be fined or may be subject to contempt of court sanctions pursuant to the laws of the Non-Removable Mille Lacs Band of Chippewa Indians.
 - (2) The Court of Central Jurisdiction shall award specific performance when other forms of relief or remedy authorized by law are deemed to be inadequate to compensate for any losses of the non-breaching party.
- (c) The Court of Central Jurisdiction may award restitution to any non-breaching party to a contract. Restitution shall be awarded to prevent unjust enrichment by the breaching party and shall be measured by the gain of the breaching party as opposed to the non-breaching parties loss. Restitution recovery may be both monetary and tangible or intangible. Restitution may also be in a form so as to restore the parties to a previous position by revision or cancellation of the contract or where a contract is reformed to reflect a more accurate statement of the parties agreement.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.I., § 16.

Cross References

Damages, *see* 24 MLBS §651 et seq.

SUBCHAPTER 3

ACTIONS FOR HARMFUL CONDUCT

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PART A

GENERAL PROVISIONS

Section

201. Rights and Obligations of All Persons.

202. Responsibility for Willful and Negligent Acts.

203. Right to Peaceful Possession of Property.

§ 201. Rights and Obligations of All Persons.

Every person who invades the interest of another, as provided in this chapter, shall be liable to the injured person in accordance with the provisions of this chapter.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II. § 1.

§ 202. Responsibility for Willful and Negligent Acts.

Every person is responsible for injury to the person, property, or rights of another caused by his willful acts or caused by his want of ordinary care or skill.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 2.

§ 203. Right to Peaceful Possession of Property.

Every person is entitled to peaceful possession of his or her own personal property and violation of that interest in peaceful possession is actionable as provided in this chapter.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 3.

Cross References

Deprivation of property without due process of law, *see* 1 MLBS § 8.

Intentional interference with personal property, *see* 24 MLBS § 255.

Recovery of possession of personal property, *see* 21 MLBS § 501 et seq.

Replevin, *see* 24 MLBS §3501 et seq.

Unreasonable searches and seizures, *see* 1 MLBS § 2.

PART B

INTENTIONAL HARMS

Section

251. Assault and Battery.

252. Infliction of Mental Distress.

253. False Imprisonment.

254. Trespass to Land.

255. Intentional Interference with Personal Property.

§ 251. Assault and Battery.

- (a) A cause of action may be brought for assault or assault and battery. An assault is any willful and unlawful attempt or offer with force or violence, to hurt the person of another. It is any act of such a nature as to create an apprehension of battery. Words alone are not enough to constitute an assault. The apprehension must be one which would normally be aroused in the mind of a reasonable person. Battery is any willful and unlawful use of force or violence upon the person of another. Person includes any part of the body or anything so closely attached thereto that it is customarily regarded as a part thereof.

- (b) Assault or battery is justifiable in the follow cases:
 - (1) When necessarily committed by a police officer in the performance of any legal duty or by any other person assisting him or acting by his direction;
 - (2) When necessarily committed by any person in arresting one who has committed any felony, and delivering him to a public officer competent to receive him in custody;
 - (3) When committed either by the party about to be injured, or by any other person in his aid or defense; in preventing or attempting to prevent an offense against his person or any trespass or other unlawful interference with real or personal property in his lawful possession; provided the force or violence used is not more than sufficient to prevent such offense;
 - (4) When committed by a parent or the authorized agent of any parent, or by any guardian or teacher in the exercise of a lawful authority to restrain or correct the child, ward, or student, provided restraint or correction has been rendered necessary by the child's refusal to obey the lawful command of such person, and the force or violence used is reasonable in manner and moderate in degree;
 - (5) When committed by any person to prevent any insane person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

- (c)
 - (1) The damages recoverable for assault are those for the plaintiff's mental or physical injury, or both. The establishment of the cause of action, without proof of harm, entitles the plaintiff to recover at least nominal damages.

- (2) Proof of contact with the plaintiff's person entitles him to recover at least nominal damages. The establishment of this cause of action entitles him also to compensation for the mental disturbance inflicted upon him as well as for any physical harm that may arise.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, §§ 4, 39, 40.

Cross References

Children and families, *see* 11 MLBS § 1 et seq.

Criminal assault and battery, *see* 24 MLBS § 1101, 1102.

§ 252. Infliction of Mental Distress.

A cause of action shall exist for the infliction of mental distress. Infliction of mental distress is an act which goes beyond the limits of accepted conduct in the community. The actor must intend that the person injured will suffer mental distress of a very serious kind. The mental distress must in fact exist and result from the act.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 5.

§ 253. False Imprisonment.

- (a) False imprisonment occurs when a person's freedom of movement has been intentionally and unlawfully restrained.
- (b) A person is not liable for false imprisonment of another in the following circumstances:
 - (1) When making a lawful arrest;
 - (2) When exercising judicial authority or carrying out the order of a court.
 - (3) When temporarily detaining a person where there is probable cause to believe such person is attempting to remove unpurchased goods or merchandise without intention of paying the purchase price.

- (c) A false imprisonment establishes a cause of action for at least nominal damages. The plaintiff may also recover any other damages that he can show were proximately caused by false imprisonment.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, §§ 6, 41.

Cross References

False arrest or unlawful restraint, criminal offenses, *see* 24 MLBS § 1108.

§ 254. Trespass to Land.

- (a) A person is subject to liability to another for trespass, irrespective of whether he thereby causes harm, if he intentionally and unlawfully:
 - (1) Enters land or any house or structure on the land in the rightful possession of the other or causes a thing or third person to do so;
 - (2) Remains on such property; or
 - (3) Fails to remove from such property a thing which he is under a duty to remove.
- (b) Extent of liability: A trespasser under this section is liable for any physical harm to the possessor of the property, or to the land, or to any personal property located thereon, or to any persons who are lawfully on the premises or their personal property, caused by any act or activity of the trespasser.
- (c)
 - (1) Where a person is entitled to a judgment for harm to land resulting from an unlawful invasion and not amounting to a total destruction in value, and damages, at the plaintiff's election, include compensation for:
 - (i) The difference between the value of the land before the harm and the value after the harm or the cost of restoration which has been or reasonably may be incurred, or if a separable portion of the land has been damaged, the loss in its value, and
 - (ii) The loss of use of the land; and
 - (iii) Discomfort and annoyance, in an action brought by the occupant.

- (2) The damages for past and prospective invasions of land include all detriment to the land past, present or future caused by such trespass.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, §§ 7, 42.

Cross References

Criminal trespass, *see* 24 MLBS § 1151.

§ 255. Intentional Interference with Personal Property.

- (a) Personal property includes any kind of property not amounting to an interest in real estate. Leases shall be considered as personal property for the purposes of this section.
- (b) A trespass to a personal property may be committed by intentionally and unlawfully:
 - (1) Dispossessing another of the personal property; or
 - (2) Using or interfering with the use of personal property in the possession of another, where:
 - (i) the personal property is impaired as to its condition, quality or value; or
 - (ii) the possessor is deprived of the use of the personal property for a substantial time; or
 - (iii) bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest.
 - (3) Disposing of personal property entrusted to the person.
 - (4) Mis-delivering personal property.
 - (5) Refusing to surrender personal property to the person entitled thereto.
- (c) One who interferes with personal property in any of the ways described in subsection (b) shall be subject to liability for the damages caused. Damages may be measured by the fair market value of the item if it is no longer available to the rightful possessor or cannot be restored to his use in the condition in which it was taken; or the fair rental value of the item if such value is ascertainable and any damages caused by reason of

the unavailability of the personal property to the owner. Damages shall be in such form and amount as is deemed just by the court.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, §§ 8-10.

Cross References

Malicious mischief, criminal offenses, *see* 24 MLBS § 1160.
Right to peaceful possession of property, *see* 24 MLBS § 203.

PART C

PUBLIC NUISANCE ORDINANCE

Section:

301. Purpose.

302. Nuisance Define.

303. Other Definitions.

304. Abatement Procedure.

305. Emergency Abatement Procedure.

306. Sovereign Immunity.

307. Severability.

Historical and Statutory Notes

The Introduction and Preamble to and § 307 of Band Ordinance 30-03 (this Part of this Subchapter) provide:

“This Public Nuisance Ordinance represents the law pertaining to nuisance on Band Lands. Prior Title 24 MLBSA Part C (Nuisance) §§ 301-304 and 24 MLBSA Subchapter VI, § 1254 are repealed and replaced in their entirety by this Ordinance.”

“**PREAMBLE:** The Mille Lacs Band of Ojibwe Indians believes every person has the right to live a quiet and peaceful life. The Band recognizes certain conditions and behaviors are nuisances, which threaten the health, safety and well-being of other persons.”

“**§ 307 Severability.** If the Court of Central Jurisdiction adjudges any provision of this Ordinance to be invalid, such judgment shall not affect any other provision of this Ordinance not specifically included in the judgment.”

§ 301. Purpose.

This Ordinance is created to minimize the impact of undesirable conditions and behaviors on Band Lands and to preserve the peace and tranquility of communities on Band Lands.

Historical and Statutory Notes

Source:

Band Ordinance 30-03, § 301.

§ 302. Nuisance Defined.

A nuisance is any substance, matter, emission, sound or thing, which is found upon, is found in, or is being discharged or is flowing from, any street, highway, railroad right-of-way, vehicle, body of water, excavation, building, lot, grounds or other property on Band Lands, and which creates a dangerous or unhealthy condition on, or which threatens the public peace on or the health, safety or sanitary condition of Band Lands, or which is offensive to or has a blighting influence on a community on Band Lands. Nuisances include, but are not limited to, the following:

- (a) **Abandoned Vehicle.** Any vehicle that is parked for a period longer than thirty (30) days with either no tags or expired tags more than thirty (30) days overdue.
- (b) **Dangerous structure.** A structure which is potentially hazardous to persons or property including, but not limited to:
 - (1) A structure which is in danger of partial or complete collapse; or
 - (2) A structure with any exterior parts which are loose or in danger of falling; or
 - (3) A structure with any parts such as floors, porches, railings, stairs, ramps, balconies or roofs, which are accessible and which have collapsed, are in danger of collapsing, or are unable to support the weight of normally imposed loads.
- (c) **Fire Hazards.** Anything or condition which creates a fire hazard or which is a violation of the fire code.
- (d) **Graffiti.** Any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched upon a rock, tree, wall, bridge, roadway, fence, gate, building or other natural or man-made structure in violation of 24 MLBS § 1161.
- (e) **Grass and Weeds.** Grass or weeds in a yard surrounding a residence which have grown to a height of twelve (12) or more inches.

- (f) **Hazards.** Anything or condition on property which may contribute to the injury of any person present on the property, including, but not limited to, open holes, open foundations, open wells, dangerous trees or limbs, abandoned refrigerators or trapping devices.
- (g) **Health Hazards.** Anything or condition which creates a health hazard or which is a violation of any health or sanitation law.
- (h) **Insects, rodents and pest harborage.** Conditions that are conducive to the presence, harborage or breeding of insects, rodents or other pests, provided that beekeeping and equipment and devices used for beekeeping shall not be considered under this Part of this Subchapter.
- (i) **Loud Music.** Any music emitted from any car, house or music player so as to create a disturbance to the neighbors or community members between the hours of 10:00 p.m. and 8:00 a.m.
- (j) **Refuse, noxious substances, hazardous wastes.** Refuse, noxious substances or hazardous wastes laying, pooled, accumulated, piled, left, deposited, buried or discharged upon or in, or being discharged or flowing from, any property, structure or vehicle, except for:
 - (1) Refuse deposited at places designated and provided for that purpose and in compliance with 11 MLBS § 1005 or other applicable law.
 - (2) Refuse stored in accordance with this Ordinance and 11 MLBS §§ 1002-1007 or other applicable law, or vehicle parts stored in an enclosed structure.
 - (3) Compost piles established and maintained for gardening purposes.
- (k) **Uncontrolled Party.** Any social gathering that creates a disturbance so as to disrupt the peacefulness of the neighborhood or community due to loud noises and/or fights or other obnoxious behavior.

Historical and Statutory Notes

Source:

Band Ordinance 30-03, § 302.

§ 303. Other Definitions.

- (a) Attractive Nuisance means anything or condition located on property that could reasonably be viewed as attracting children to enter into or onto the property, thing or condition to play, and which pose a risk of injury or death to such children.

- (b) Band Lands means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.
- (c) Enforcement Officer means any officially designated Mille Lacs Band Housing Authority representative, Community Development representative, Health & Human Services representative, Tribal Police Officer or Department of Natural Resources warden or official.

Historical and Statutory Notes

Source:

Band Ordinance 30-03, § 303.

§ 304. Abatement Procedure.

Except as provided in § 305 of this Chapter, the following procedure will be used to abate a nuisance:

- (a) **Order.** An Enforcement Officer shall serve a written order upon the party believed to be responsible for creation of the nuisance, if known, and upon the Owner and Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance). The Enforcement Officer may also serve the written order upon any other known party to the nuisance. The order shall contain the following:
 - (1) A full and complete street address or a real estate description sufficient to identify the location of the nuisance.
 - (2) A description of the nuisance and the remedial action required to abate the nuisance.
 - (3) The abatement deadline, to be determined by the Enforcement Officer, allowing a reasonable time for the performance of any act required.
 - (4) A statement that the order may be appealed and a hearing in the Court of Central Jurisdiction obtained by filing a written request for hearing with the Court Clerk prior to the abatement deadline designated in the order.
 - (5) A statement that, if the remedial action is not taken nor a request for a hearing filed with the Court Clerk within the time specified, the Mille Lacs Band will abate the nuisance and charge all costs incurred therein against the person responsible for creation of the nuisance or the Owner or Tenant of the property on which the nuisance is located.

- (b) **Setting Hearing Date.** In the event that a request for hearing is filed, the Court Clerk shall schedule the matter for hearing. In all instances, the Court Clerk shall set the hearing no longer than sixty (60) days from the filing of the request for hearing.
- (c) **Notice of Hearing Date.** In the event a request for hearing is filed with the Court of Central Jurisdiction, the Court Clerk shall mail a notice of the date, time, place and subject of the hearing to the owner, tenant and/or known responsible parties. The Court Clerk shall also mail the notice to the District Community Center where the nuisance is located requesting that it be posted. The Court Clerk shall also notify the Enforcement Officer and the Solicitor General's Office.
- (d) **Hearing.** If the Court ruling requires abatement, an Order shall be issued to fix a time when the nuisance must be abated and shall provide that, if the nuisance is not abated within the time specified, the Mille Lacs Band may abate the nuisance and assess the costs of the abatement to the person found responsible for the nuisance.
- (e) **Abatement.** If the remedial action is not taken nor an appeal filed within the time specified, the Mille Lacs Band may abate the nuisance.
- (f) **Fines.** Any person subject to the jurisdiction of the Mille Lacs Band who creates, allows or is responsible for a nuisance within the meaning of this Part of this Subchapter shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, a fine may be imposed up to a maximum amount of \$1,000.00.

Historical and Statutory Notes

Source:

Band Ordinance 30-03, § 304.

§ 305. Emergency Abatement Procedure.

When an Enforcement Officer determines that a dangerous structure, an attractive nuisance, or any other nuisance as defined in this Ordinance exists on Band Lands and constitutes an immediate danger or hazard which, if not immediately abated, will endanger the health or safety of the public, and such danger cannot be removed in a timely manner by following the procedures of Section 304 of this Chapter, the Mille Lacs Band may abate the nuisance by the procedure described below:

- (a) **Order.** The Mille Lacs Band may order emergency abatement by an administrative order to be signed by the Mille Lacs Band Commissioner of Community Development, Housing Authority Executive Director, Chief of Tribal Police, Commissioner of Health & Human Services, Commissioner of Administration, Assistant Commissioner of Administration, or their officially designated representative ("Responsible Official"). The Order must describe the nuisance,

- identify its location, summarize the bases on which the Enforcement Officer determined that an emergency abatement was appropriate under this section, and set forth the concurrence of the Responsible Official in that determination. Upon issuance of the Order, the Band will abate the nuisance in accordance with the Order, and an Enforcement Officer will serve a copy of the Order upon the party believed to be responsible for creation of the nuisance, if known, and upon the Owner and Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance).
- (b) **Notice of Abatement.** Following an emergency abatement, the Responsible Official shall file the administrative order with the Court of Central Jurisdiction and request that a hearing be scheduled before the Court following notice to the party believed to be responsible for the creation of the nuisance, if known, and to the Owner and Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance). The notice shall attach a copy of the administrative order and shall contain:
- (1) a description of the nuisance;
 - (2) the action taken;
 - (3) the reasons for immediate action;
 - (4) the costs incurred in abating the nuisance; and
 - (5) the date, time and place of the hearing.
- (c) **Hearing.** At the time of the hearing, the Court shall hear from the Enforcement Officer, the Responsible Official, and Commissioner or any other person who wishes to be heard regarding their personal knowledge of the nuisance.
- (d) **Fines and Assessments.** Any person subject to the jurisdiction of the Mille Lacs Band who creates, allows or is responsible for a nuisance abated under this section shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, a fine may be imposed up to a maximum amount of \$1,000.00. In addition, if the Band proves by a preponderance of the evidence that the emergency abatement was appropriate under this section, the Court of Central Jurisdiction may levy an assessment for costs incurred by the Band in abating the nuisance.

Historical and Statutory Notes

Source:

Band Ordinance 30-03, § 305.

§ 306. Sovereign Immunity.

Nothing in this Part of this Subchapter shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

Historical and Statutory Notes

Source:

Band Ordinance 30-03, § 306.

§ 307. Severability.

If the Court of Central Jurisdiction adjudges any provision of this Title to be invalid, such judgment shall not affect any other provision of this Title not specifically included in the judgment.

Historical and Statutory Notes

Source:

Band Ordinance 30-03, § 307.

PART D

DEFAMATION

Section

351. Defamation Classified and Defined.

352. Obligation to Refrain from Defamation.

353. Privileged Communications.

354. Publication.

355. Damages.

§ 351. Defamation Classified and Defined.

Defamation is effected by:

- (a) **Libel.** Libel is a false and unprivileged publication by writing, printing, picture, or other presentation to the eye which exposes any person to hatred, contempt, ridicule, or exposure to abuse, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.
- (b) **Slander.** Slander is a false and unprivileged oral statement other than libel, which:

- (1) Charges any person with crime, or with having been indicted, convicted, or punished for crime;
- (2) Imputes to him the present existence of an infectious, contagious or repulsive disease;
- (3) Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit.
- (4) Imputes to him sexual misconduct.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 17.

§ 352. Obligation to Refrain from Defamation.

Every person is obligated to refrain from infringing upon the right of others not to be defamed.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 16.

§ 353. Privileged Communications.

(a)

- (1) Fairness or fair comment as used in this section means that the statement was made, in part, at least, for the purpose of giving the public the benefit of comment which it is entitled to have rather than for the ulterior motive of causing harm to the plaintiff.
- (2) The term malice or malicious as used in this section means the communication was made intentionally, with evil intent and without just cause or excuse; made for the purpose of annoying or injuring another. Malice may be inferred from proof that the defendant had knowledge of the falsity of the statement and/or acted with reckless disregard of whether the statement was true or false.

(b) No one can be held liable for a written or oral communication which is privileged.

- (1) Absolute privilege: Any communication made in the course of legislative and judicial proceedings or, communications made in the discharge of a duty by an officer of government under authority of law is absolutely privileged and cannot be the subject of a defamation complaint so long as the communication is within the scope of the legislative, judicial, or executive proceedings of government.
- (2) Qualified privilege: Communications made without malice and with honest belief in the truthfulness of the statement, is privileged in the following circumstances:
 - (i) A response to a legitimate inquiry;
 - (ii) Communications regarding family or household matters;
 - (iii) Communications regarding school matters;
 - (iv) Communications regarding activities in organizations and societies;
 - (v) Communications between church members or members of cultural societies regarding the organizational or administrative matters of such societies;
 - (vi) Statements made in an honest endeavor to protect one's reputation;
 - (vii) Communications in aid of law enforcement;
 - (viii) Communications to public authorities by a private person;
 - (ix) Any petition for redress of grievance addressed to government;
 - (x) Any comment on a matter of public interest and concern, so long as the comment is fair, made for a bona fide public purpose and not malicious.
 - (xi) Any communication dealing with political matters, public officers and candidates for office, so long as they are fair and not made maliciously.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 18-20.

§ 354. Publication.

In order to constitute actionable defamation, a communication must be to persons other than the plaintiff.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 21

§ 355. Damages.

An award of damages for defamation shall not exceed five hundred dollars (\$500).

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 22.

PART E

FRAUD AND DECEIT

Section

401. Deceit.

402. What Constitutes a Fraudulent or Deceitful Act or Statement.

Cross References

Criminal fraud, *see* 24 MLBS § 1154.

§ 401. Deceit.

One who willfully deceives another, with intent to induce him to change his position to his injury or risk, is liable for any damage which that person suffers.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 23.

§ 402. What Constitutes a Fraudulent or Deceitful Act or Statement.

In order to prove a case of fraud or deceit, the plaintiff must show that the defendant made a statement or representation which met the following requirements:

- (a) It was made as a statement of fact, not mere opinion;
- (b) It was untrue and known to be untrue by the party making it or else recklessly made;
- (c) That it was made with the intent to deceive and for the purpose of inducing the other party to act upon it;
- (d) That the plaintiff was reasonably entitled to rely upon said statement and did so;
- (e) That he was thereby induced to act upon the statement; and;
- (f) He suffered injury or damage.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 24.

PART F

INVASION OF PRIVACY

Section

451. Right of Privacy.

452. Liability.

453. Damages.

Cross References

Interference with privacy, criminal offenses, *see* 24 MLBS § 1106.

Opening sealed letters, criminal offenses, *see* 24 MLBS § 1105.

§ 451. Right of Privacy.

Everyone is entitled to protection against intrusion or disclosure on their personal and private affairs.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 25.

§ 452. Liability.

Any action which makes public private facts which would tend to damage the plaintiff's reputation or good name, or who discloses information contained in confidential records of the Band or any of its agencies to persons not authorized to receive such information shall be liable for damages to the person injured thereby.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 26.

§ 453. Damages.

The damages for invasion of privacy shall be within the discretion of the judge pursuant to the severity of the invasion or privacy and the limits of the Indian Civil Rights Act. (25 U.S.C.A. § 1302.)

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 27.

PART G

NEGLIGENCE

Section

501. Definition.

502. Establishing Negligence.

503. Standard of Care.

504. Comparative Fault.

§ 501. Definition.

Negligence means the failure to exercise reasonable or ordinary care, which causes harm to persons or property.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 28.

§ 502. Establishing Negligence.

To establish negligence, the plaintiff must show the following:

- (a) The defendant was under a duty to the plaintiff to use ordinary care;
- (b) The defendant breached that duty;
- (c) The breach caused the plaintiff's injury; and
- (d) The plaintiff sustained actual loss or damage.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 29.

§ 503. Standard of Care.

The standard of care is the standard which can be expected to be followed by a reasonable person in the same or similar circumstances.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, §30.

§ 504. Comparative Fault.

Where the actions of two or more persons combined to cause the plaintiff's injury, the responsibility shall be proportioned to each in accordance with the degree of fault that each bears. Where the plaintiff himself or herself is partly to blame for their injury to damage, any award of damages shall be reduced by the proportion which their fault bears to the fault of all other parties.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 31.

PART H

WRONGFUL DEATH

Section

551. Wrongful Death Actions.

§ 551. Wrongful Death Actions.

When the death of a person is caused by the wrongful act, neglect or default of another, his personal representative may bring an action for damages against the person causing the death. Every such action shall be for the benefit of the spouse, child or children or the person whose death was caused. If there be no wife, husband, child or children, the action may be maintained for the benefit of the parents, minor sisters or brothers, provided that it is shown that they were dependent upon the deceased person for support or sustained some personal damages by reason of the death.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 32.

Cross References

Survival of actions, *see* 24 MLBS § 2015.

PART I

CULTURAL ACTIONS

Section

601. Action for Causing Cultural Harm.

602. Cultural Harm.

603. Sanctions.

Cross References

Panel of elders, entry of decision as judgment and order, *see* 5 MLBS § 103.

Traditional theory of law, *see* 24 MLBS § 2003.

§ 601. Action for Causing Cultural Harm.

Any person shall have a right to bring a cultural action against another for causing cultural harm.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 34.

§ 602. Cultural Harm.

Cultural harm is established by showing that the defendant has engaged in conduct which:

- (a) Tends to harm the good health of the community by producing physical or moral degradation;
- (b) Raises fears and apprehension in the community.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 35.

§ 603. Sanction.

In the even any defendant is found to have committed a cultural offense, he court may impose such sanctions as it deems just and consistent with the traditions and beliefs of the Band which include but not be limited to injunctions, both positive and negative, removal and exclusion. It may also include orders for performance of community service or for payment of fines.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 36.

Cross References

Exclusion, *see* 2 MLBS § 201.

PART J

DAMAGES

Section

651. Applicability.

652. Measure of Damages.

653. Exemplary (Punitive) Damages.

Cross References

Commercial practices, damages against Band, *see* 18 MLBS § 5.
Remedies for breach of contract, *see* 24 MLBS § 120.

§ 651. Applicability.

This Part J shall govern damage awards for harmful conduct described in this subchapter except where a different measure is specifically provided.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 37.

§ 652. Measure of Damages.

For any injury to person or property, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate for all detriment proximately caused thereby, whether it could have been anticipated or not.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 37.01.

§ 653. Exemplary (Punitive) Damages.

In any action for injury to person or property, where the defendant has been guilty of fraud, malice, actual or presumed, or by willful and wanton misconduct, the court or jury, in addition to the actual damage, may give damages for the sake of example and by way of punishing the defendant, but in no event shall such damages exceed specified limits where provided in this chapter.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 38.

PART K

SUITS AGAINST BAND OFFICIALS

Section

701. Immunity.

§ 701 Immunity.

- (a) No elected official or employee of the Mille Lacs Band of Chippewa Indians shall be subject to a lawsuit for money damages for actions taken in the course of their official duties or in the reasonable belief that such actions were within the scope of their official duties; unless, in the case of a Band employee who does not hold elected office, it is established that such action was taken with malicious intent and in bad faith.
- (b) Any employee or appointee to a position in the civil service of the Mille Lacs Band of Chippewa Indians who shall act in a manner consistent with their statutory authority shall be immune from any civil cause of action in any court of competent jurisdiction. Burden of proof shall rest upon the complainant.

Historical and Statutory Notes

Source:

Band Statute 1096-MLC-28, § 44.

Band Statute 1303-MLC-4, § 9.04.

Cross References

Chief Executive and appointed officers, immunity, *see* 4 MLBS § 24.

Consolidated Nay-Ah-Shing School Board, responsibility for unacceptable performance of duties, *see* 9 MLBS § 13.

Domestic abuse prevention, immunity of Law Enforcement Officers, *see* 8 MLBS § 415.

Duty to report abuse or neglect, immunity, *see* 8 MLBS § 304.

Government employees, *see* 6 MLBS § 1 et seq.

Immunity for Justices and Judges, *see* 5 MLBS § 119.

Solicitor General, Immunity, *see* 4 MLBS § 21.

CHAPTER 2

CRIMINAL CAUSES OF ACTION

Subchapter

- 1. General Provisions
- 2. Department of Justice

Section

- 1001
- 1051

3. Offenses Involving Damage to the Person	1101
4. Offenses Against Property	1151
5. Offenses Against Public Administration	1201
6. Offenses Against Public Order, Health and Decency	1251

Historical and Statutory Notes

The Preamble to Band Statute 1164-MLC-6 provides:

"It is enacted, a statute for the protection of all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. In order to protect the safety and general welfare of those persons under said jurisdiction, it has become necessary to prevent the commission of crime by impartially defining acts and commissions of behavior which shall be contrary to the norms of a law-abiding society and to design a system of measures under which persons who may violate the laws of the Band can be dealt with according to law and without prejudice or malice."

Band Statute 1164-MLC-6, § 61 provides:

"Section 61. Severability. If any provisions of this Chapter or the application thereof to any person, business, corporation or circumstances is held invalid, the invalidity, shall not affect other provisions or application of the Chapter which can be given effect without the invalid provision or application and to this end the provisions of this Chapter are declared severable."

Cross References

Burial grounds protection, violations, *see* 10 MLBS § 1003.
 Court of Central Jurisdiction, subject matter jurisdiction over causes of action arising from this chapter, *see* 24 MLBS § 4002.
 Cultural actions, *see* 24 MLBS § 601 et seq.
 Environmental protection, criminal penalties, *see* 11 MLBS § 14.
 Executive Orders, Secretarial Orders, Commissioner's Orders, or Solicitor General opinions, violation, *see* 24 MLBS § 1212.
 Gasoline and petroleum products excise tax, offenses, *see* 22 MLBS § 309.
 Historical preservation, criminal offenses, *see* 10 MLBS § 602.
 Motor vehicles, Fraudulent practices, *see* 19 MLBS § 301 et seq.
 Nonregistration or improper registration, penalties, *see* 19 MLBS § 104.
 Registration, minors, consent of parent or guardian, *see* 19 MLBS § 106.
 Parking privileges for physically handicapped persons, offenses, *see* 19 MLBS §§ 603, 606, 607.
 Prohibited drugs, *see* 23 MLBS § 1 et seq.
 Sales and use taxes, offenses, *see* 22 MLBS § 510.
 Tobacco excise taxes, unlawful activity, *see* 22 MLBS § 216.
 Traffic violations, *see* 19 MLBS § 401 et seq.
 Trespass, *see* 21 MLBS § 206.
 Unauthorized easements, *see* 21 MLBS § 205.
 Watercraft violations, enforcements, *see* 20 MLBS § 401 et seq.

SUBCHAPTER 1

GENERAL PROVISIONS

Section

1001. Findings and Determinations.

1002. General Definitions.

1003. Civil Actions Not Barred.

1004. Limitation of Actions.

1005. Responsibility.

1006. Self-Defense.

1007. Attempt.

§ 1001. Findings and Determinations.

- (a) The Band assembly hereby finds and determines that the purpose of this chapter is to protect all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians through the development of various measures which define in writing acceptable and non-acceptable behaviors or omissions in the behavior of those persons who are enrolled members and other Indians under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians and to provide equal justice to all who may come before the Court of Central Jurisdiction charged with a criminal offense.
- (b) The Band Assembly hereby finds that the public safety and welfare of all persons under the jurisdiction of the Band will be enhanced by preventing the commission of crime through the deterring effect of the sentences authorized when the public safety and interest requires.
- (c) The Band Assembly hereby finds that the Court of Central Jurisdiction shall be authorized to exercise its inherent jurisdiction in three types of legal matters:
 - (1) Civil litigation.
 - (2) Criminal litigation.
 - (3) Unwritten cultural law litigation.
- (d) Notwithstanding anything to the contrary, the provisions of this chapter shall be construed according to the fair import of its terms, to promote justice, and to effect its purpose, in the best interest of enhancing the customs and sovereign right of the people of the Non-Removable Mille Lacs Band of Chippewa Indians which are hereby declared.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 1.

Cross References

Jurisdiction of Court of Central Jurisdiction, *see* 5 MLBS § 111 et seq.

§ 1002. General Definitions.

Unless otherwise specified in a particular section, the following should apply:

- (a) **Acts**--Has its usual and ordinary grammatical meaning and includes any bodily movement, and form of communication where relevant, includes a failure or omission to take action.
- (b) **Bodily Harm**--Means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.
- (c) **Deceit**--Means a person knowingly and intentionally causes harm or damage to another by:
 - (1) Creating or confirming in another an impression which is false and which the offender does not believe to be true; or
 - (i) Failing to correct a false impression which the offender previously has created or confirmed; or
 - (ii) Preventing another from acquiring information pertinent to the disposition of the property involved; or
 - (iii) Selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is or is not of value or is not a matter of official record; or
 - (iv) Promising performance which the offender does not intend to perform or know will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.
- (d) **Deprive**--Means to knowingly and intentionally withhold the property of another, permanently or for such a period as to appropriate a portion of the value or with the purpose to restore it only upon payment of reward or other compensation.

- (e) **Enter or remain unlawfully**--A person who knowingly and intentionally enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he/she is not licensed, invited or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.
- (f) **Gross Negligence**--A person acts with gross negligence whenever there is an intentional failure to perform a duty in reckless disregard of the consequences; such a gross wanton of care and regard for the rights of others as to justify the presumption of willfulness and wantonness.
- (g) **Intentionally**--A person acts intentionally when his/her acts are willful and on purpose.
- (h) **Knowingly**--A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense, when he/she is aware of his/her conduct or that the circumstance exists. When knowledge of the existence of a particular fact is aware of high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.
- (i) **Minor**--For purposes of this section, a minor shall be considered any person less than eighteen (18) years of age.
- (j) **Obtain**--Means a person knowingly and intentionally in relation to property, to bring about transfer of interest or possession, whether to the offender or to another and in relation to labor of services, to secure the performance thereof.
- (k) **Occupied Structure**--Means any building, vehicle or other place suited for human occupancy or night lodging of person or for carrying on business, whether or not a person is actually present. Each unit of a building consists of two (2) or more units separately secured or occupied is a separate occupied structure.
- (l) **Offender**--Means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.
- (m) **Owner**--Means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful and without whose consent the offender has no authority to exert control over the property.
- (n) **Person**--Includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

- (o) **Possession**--Is the knowing control of anything for a sufficient time to be able to terminate control.
- (p) **Premises**--Includes any type of structure or building and any real property.
- (q) **Property**--Means anything of value. Property includes, for example, but is not limited to real estate, money, commercial instruments, written instruments representing or embodying rights concerning anything of value, labor or services, or otherwise of value to the owner, things growing on or affixed to, or found on land, or part of, or affixed to any building, birds, animals and fish, which ordinarily are kept in a state of confinement, etc.
- (r) **Property of Another**--Includes property in which the offender himself/herself may have an interest, but does not have the authority to impair or defeat the interest of the other person in the property.
- (s) **Public Places**--Means any place to which the public or any substantial group thereof has access.
- (t) **Solicit or Solicitation**--Means to knowingly and intentionally command, authorize, urge, incite, request, or advise another to commit an offense.
- (u) **Tamper**--Means to knowingly and intentionally interfere with something improperly, meddle with it, make unwarranted alternation in its existing condition, or deposit refuse upon it.
- (v) **Threat**--Means a menace, however communicated, to knowingly and intentionally:
 - (1) Inflict physical harm on the person threatened or by any other person or on property; or
 - (2) Subject any person to physical confinement or restraint; or
 - (3) Commit any criminal offense; or
 - (4) Accuse any person of criminal offense; or
 - (5) Expose any person to hatred, contempt or ridicule; or
 - (6) Harm the credit or business reputation of any person; or
 - (7) Reveal any information sought to be concealed by the person threatened; or
 - (8) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

- (9) Testify or provide information or withhold testimony or information with respect to another legal claim or defense.
- (w) **Weapons**--Means any instrument, firearm, article or substance which, regardless of this primary function, is readily capable of being used to produce death or serious bodily injury.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 8.

§ 1003. Civil Actions Not Barred.

This chapter does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered and civil injury is not merged into the criminal offense.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 7.

§ 1004. Limitation of Actions.

A prosecution for any offense may be commenced within one (1) year after it is committed. The period of limitations does not run under the following conditions:

- (a) During any period in which the offender is not usually and publicly residing within this Reservation or is beyond the jurisdiction of this Reservation; or,
- (b) During any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or
- (c) During a prosecution pending against one offender for the same conduct, even if the prosecution is dismissed.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 7.01.

§ 1005. Responsibility.

A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him/her capacity to appreciate the criminality of his/her conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 9.

§ 1006. Self-Defense.

- (a) A person is justified in the use of force or threat to use force against another when and to the extent that he/she reasonably believes that such force is necessary to defend himself/herself or another person against another's imminent use of unlawful force or prevent other person's trespass on or tortuous or criminal interference with real or personal property which he/she or his/her family owns, possesses or has the legal duty to protect.
- (b) However, a person is justified in the use of force likely to cause death or serious bodily harm only if he/she reasonably believes that such force is necessary to prevent imminent death or serious bodily injury to himself/herself or another person.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 10.

§ 1007. Attempt.

- (a) A person commits the offense of attempt when he/she knowingly and intentionally with the purpose to commit a specific offense, does any act toward the commission of such offense.
- (b) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accuse to commit the offense attempted.
- (c) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

- (d) A person shall not be liable under this section, if under circumstance manifesting a voluntary and complete renunciation of his/her criminal purpose, he/she avoided the commission of the offense attempted by abandoning his/her criminal effort.
- (e) Proof of the completed offense does not bar conviction for the attempt.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6 § 11.

SUBCHAPTER 2

DEPARTMENT OF JUSTICE

Section

1051. Creation.

1052. Powers and Duties of Department of Justice.

1053. Department of Justice Members.

1054. Powers and Duties of Solicitor General.

1055. Powers and Duties of Chief Law Enforcement Officer.

1056. Meetings.

Historical and Statutory Notes

The title of Ordinance 16-09 is “An Ordinance amending Title 24 of the Mille Lacs Band Statutes Annotated (MLBSA), Chapter II, Subchapter II (Department of Justice) for the purpose of establishing two new departments: (1) the Mille Lacs Band Legal Services Office; and (2) the MLBO Compliance Office. These two offices shall be organized under the MLBO Department of Justice with oversight by the Band’s Solicitor General.”

The preamble of Ordinance 16-09 provides:

“It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending 24 MLBSA, Chapter II, Subchapter II (Department of Justice) in order to establish two new departments within the Department of Justice, namely, (1) the Mille Lacs Band Legal Services Office; and (2) the MLBO Compliance Office.

“It is the desire of the Mille Lacs Band of Ojibwe that each Band Member, who meets the income guidelines of the new legal services program, be provided competent legal representation for both civil and criminal matters. In order to enact fair and reasonable guidelines for all Band Members, the Band provided legal services will be limited to Band Members per annual use. The service area for the Mille Lacs Band Legal Services Office will be the counties of Mille Lacs, Morrison, Pine, Aitkin, and Crow Wing.

“The Mille Lacs Band of Ojibwe recognizes that it is necessary to establish a MLBO Compliance Office within the Department of Justice in order to prevent a conflict of interest within any other specific Band

program or department. This new office will be responsible for monitoring, auditing and/or investigating alleged non-compliance of the Band's Procurement Law (7 MLBSA *et seq.*) in regard to housing, construction or other related matter, including acting as Building Inspector.”

Cross References

Impersonating Tribal official or other person in authority, *see* 24 MLBS § 1213.

§ 1051. Creation.

There is hereby created a Department of Justice within the Execute Branch of Government in and for the constituent Bands of the Non-Removable Mille Lacs Band of Chippewa Indians for the expressed purpose of protecting the general welfare and safety of all those who enter lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 2.

§ 1052. Powers and Duties of Department of Justice.

The Department of Justice is hereby authorized to promulgate policy governing the conduct and employment rules and regulations of all law enforcement of the Non-Removable Mille Lacs Band of Chippewa Indians in the interest of fair, equal and impartial enforcement of all laws of the Band. The Department of Justice shall have the power to review all actions of any law enforcement officer and to hold hearings upon receipt of any complaint from any enrolled member of the Non-Removable Mille Lacs Bands of Chippewa Indians. The Department of Justice shall have power to seek financial assistance from the United States, any of its subdivisions or any private foundation in the interests of enhancing the development of law enforcement and judiciary in general. The Department of Justice shall be authorized to take whatever lawful actions are deemed necessary in the interests of improving the general public interests, faith and confidence in the judicial systems.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 2.01.

§ 1053. Department of Justice Members.

The Department of Justice shall consist of the following:

- (a) Solicitor General, Deputy Solicitor General(s), and legal support staff;
- (b) Chief Law Enforcement Officer, Deputy Law Enforcement Officers and staff;
- (c) Mille Lacs Band Legal Services Director, legal staff and support staff; and
- (d) MLBO Compliance Officer and staff.

The Solicitor General shall exercise day-to-day supervision over the Department of Justice.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 3.
Band Ordinance 16-09, § 1, Section 1053.

Cross References

Solicitor General, *see* 4 MLBS § 17 et seq.

§ 1054. Powers and Duties of Solicitor General.

The Solicitor General shall be the leader of the Department of Justice (“Department”) and have the following authority in exercising said authority of government:

- (a) To convene the department for due cause at any time. In the event that she/he fails to do so upon request of any two members of the Department, the Department may be convened after 48 hours written notice by any member of the Department.
- (b) As an appointed official and the Band’s lead attorney, the Solicitor General is responsible to all Mille Lacs Band of Ojibwe elected officials.
- (c) The Solicitor General shall have the responsibility for ensuring the enforcement of all the laws of the Mille Lacs Band of Ojibwe.
- (d) The Solicitor General shall have a duty to supervise investigations of potential violations of the law.
- (e) The Solicitor General shall prosecute any and all violators of the law.
- (f) The Solicitor General's primary allegiance shall be to the laws of the Band and not to the Executive Branch. Hence, the Solicitor may conduct investigations and prosecute members of the Executive Branch, as well as the Legislative or Judicial Branches within the parameters of Band law.

- (g) The Solicitor General shall have the supervisory and administrative control of the Justice Department including Deputy Solicitor General(s) and staff, Law Enforcement Officers and staff, Mille Lacs Band Legal Services Director and staff, and MLBO Compliance Officer and staff.
- (h) The Solicitor General shall review the laws of the Mille Lacs Band of Ojibwe to assure their compliance with the Indian Civil Rights Act (25 U.S.C.A. § 1302).
- (i) The Solicitor General shall supervise and advise the Chief Law Enforcement Officer as to his duties and obligations.
- (j) The Solicitor General is authorized to perform background investigations for purposes of employment and election purposes.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 4.
Band Ordinance 16-09, §§ 1, 1054.
Band Ordinance 18-14.

Cross References

Division of powers, *see* 2 MLBS § 3.
Solicitor General, *see* 4 MLBS § 17 et seq.

§ 1055. Powers and Duties of Chief Law Enforcement Officer.

The Chief Law Enforcement Officer shall have the following authority in the exercise of enforcement powers of Band government:

- (a) The Chief Law Enforcement Officer shall have the authority to enforce the laws of the Non-Removable Mille Lacs Bands of Chippewa Indians.
- (b) The Chief Law Enforcement Officer shall have the duty to promote public safety, protect members of the Band and Band property, preserve the peace, and enforce all Band laws.
- (c) The Chief Law Enforcement Officer shall have the authority to delegate his powers and duties to other officers under his command.
- (d) The Chief Law Enforcement Officer and other Officers under his command shall have the authority to make arrests. Law Enforcement Officers all have the authority to carry handguns, other firearms, and other weaponry for their personal protection and protection of others.

- (e) The Chief Law Enforcement Officer shall work with other law enforcement agencies to promote the peace.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 5.

Cross References

Domestic abuse prevention, immunity of Law Enforcement Officers, *see* 8 MLBS § 415.
Warrant, summons and arrest, *see* 24 MLBS § 4101 et seq.

§ 1056. Meetings.

The Department of Justice shall meet as it may deem necessary. Its meetings shall be tape recorded, transcribed and distributed to the Chief Executive, Speaker of the Assembly and the Chief Justice within five days following said meetings. The Solicitor General shall be responsible for compliance and he shall consider said minutes to be classified and prohibit any further distribution of such. The minutes shall be prima facie evidence of the facts therein state.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 6.

SUBCHAPTER 3

OFFENSES INVOLVING DAMAGE TO THE PERSON

Section

1101. Assault.

1102. Assault and Battery.

1103. Abduction.

1104. Obscene or Harassing Telephone Calls.

1105. Opening Sealed Letter--Intercepted Mail.

1106. Interference with Privacy.

1107. Mistreatment of Patients.

1108. False Arrest or Unlawful Restraint.

1109. Intimidation of a Public Official.

§ 1101. Assault.

Any person who shall knowingly and intentionally intimidate or threaten immediate bodily harm to another person through unlawful force or violence shall be deemed guilty of assault, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, or a fine of not more than \$500.00, or both if so determined by the Court, furnish a peace bond in case in an amount to be designated by the Court.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 12.

Cross References

Civil actions for assault and battery, *see* 24 MLBS § 251.
Domestic abuse prevention, *see* 8 MLBS § 401 et seq.
Duty to report abuse or neglect, *see* 8 MLBS § 301 et seq.
Government employees, summary dismissal, *see* 6 MLBS § 103.

§ 1102. Assault and Battery.

Any person who shall knowingly and intentionally strike another person, or otherwise inflicts bodily injury, or negligently inflicts bodily harm on another with a weapon, or who shall be offering violence, cause another to harm himself/herself, shall be deemed guilty of assault and battery, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 13.

Cross References

Civil actions for assault and battery, *see* 24 MLBS § 251.
Domestic abuse prevention, *see* 8 MLBS § 401 et seq.
Duty to report abuse or neglect, *see* 8 MLBS § 301 et seq.
Government employees, summary dismissal, *see* 6 MLBS § 103.

§ 1103. Abduction.

Any person who shall knowingly take away, or detain another person against his/her will or without the consent of the parent or other person having lawful care or charge of him/her, shall be deemed guilty of abduction and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 14.

§ 1104. Obscene or Harassing Telephone Calls.

Any person who by means of a telephone makes any comment, request, suggestion or proposal which is obscene, lewd or indecent or makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number or makes or causes the telephone another repeatedly or continuously to ring, with intent to harass any person at the called number, or knowingly permits any telephone under his/her control to be used for any purpose prohibited by this section shall be guilty of an offense and upon conviction thereof, shall be sentenced to a fine not to exceed \$500.00, and/or be required to furnish a satisfactory bond to keep the proper use of a telephone.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 16.

§ 1105. Opening Sealed Letter--Intercepted Mail.

Any person who knowing that he/she does not have the consent of either the sender or the addressee intentionally opens any sealed letter, telegram or package addressed to another, or who knowing that a sealed letter, telegram or package has been opened without the consent of either the sender or addressee, intentionally publishes any of the contents, or who knowingly intercepts any letter, telegram or package addressed to another person, shall be deemed guilty of an offense and upon conviction shall be sentenced to incarceration for a period of time not to exceed 180 days, and/or a fine not to exceed \$500.00, in addition to any award of damages for the benefit of the injured party.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 17.

Cross References

Civil actions, invasion of privacy, *see* 24 MLBS § 451 et seq.

§ 1106. Interference with Privacy.

Any person who enters upon another's property and surreptitiously gazes, stares, or peeps in the window of a house or place of dwelling of another with or without the intent to intrude upon or

interfere with the privacy of a member of the household thereof, shall be deemed guilty of an offense and upon conviction shall be sentenced to incarceration for a period of time not to exceed 180 days, and/or fine not to exceed \$500.00, in addition to any awards of damages for the benefit of the injured party.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 18.

Cross References

Civil actions, invasion of privacy, *see* 24 MLBS § 451 et seq.

§ 1107. Mistreatment of Patients.

Any person who being in charge of or employed at any facility which provides care to another person, who intentionally abuses, ill-treats or culpably neglects any patient to his physical detriment, shall be deemed guilty of an offense and upon conviction shall be sentenced to incarceration for a period of time not to exceed 180 days, and/or a fine not to exceed \$500.00, in addition to any award of damages for the benefit of the injured party.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 19.

Cross References

Duty to report abuse or neglect, *see* 8 MLBS § 301 et seq.

§ 1108. False Arrest or Unlawful Restraint.

Any person who shall knowingly and intentionally make, or cause to be made the unlawful arrest, detention or imprisonment of another person, or who shall knowingly and without lawful authority restrain another so as to interfere substantially with his/her liberty, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 20.

Cross References

False imprisonment, civil causes of action, *see* 24 MLBS § 253.

§ 1109. Intimidation of a Public Official.

Any person who commits an offense contained in §§ 1101, 1102, 1104 or 1106 of this Title against an elected or formerly elected office holder of the Band motivated primarily by the fact that the official is or was formerly an elected office holder shall be guilty of intimidation of a public official, and upon conviction thereof shall be sentenced to imprisonment for a term of up to one year or a fine of not more than \$5,000 or both.

Historical and Statutory Notes

Source:

Band Ordinance 39-98, § 16.

Cross References

Definition of Elected Officials for purposes of Band Ordinance 39-98, *see* 6 MLBS § 1102.

SUBCHAPTER 4

OFFENSES AGAINST PROPERTY

Section

- 1151. Trespass.**
- 1152. Theft.**
- 1153. Embezzlement.**
- 1154. Fraud.**
- 1155. Issuing a Bad Check.**
- 1156. Forgery.**
- 1157. Fraudulent Long Distance Telephone Calls.**
- 1158. Receiving Stolen Property.**
- 1159. Extortion.**
- 1160. Malicious Mischief.**
- 1161. Graffiti.**

§ 1151. Trespass.

- (a) Any person who shall knowingly and intentionally go upon or pass over any cultivated or enclosed lands or premises of another person and shall refuse to go immediately therefrom on the request of the owner or occupant thereof, or who shall knowingly allow livestock to occupy or graze on the cultivated or enclosed lands of

another person shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine not to exceed \$500.00, and/or shall be sentenced to labor for a period not to exceed 180 days, in addition to any award of damages made by the Court for the benefit of the injured party.

- (b) Any person who shall go upon or pass over any lands which are under lease or any allotted lands of another person and shall refuse to immediately therefrom on the request of the lessee, or owner or occupant thereof, shall be deemed guilty of an offense and upon conviction shall be sentenced to a fine not to exceed \$500.00, in addition to any award of damages for the benefit of the injured party.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 21.

Cross References

Trespass to land, civil causes of actions, *see* 24 MLBS § 254.

§ 1152. Theft.

Any person who shall knowingly and intentionally obtain or exert unauthorized control over property of the owner and has the purpose of depriving the owner of the property, or to deprive the owner of the property, or uses, conceals or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property shall be deemed guilty of theft, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days or a fine not to exceed \$500.00, or by both fine and imprisonment, and may be ordered by the Court to make proper restitution.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 22.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

§ 1153. Embezzlement.

Any person who having lawful custody of property not his/her own, shall knowingly and intentionally appropriate the same to his/her own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution. As used in this section, embezzlement shall also include

the spending a minor's funds by parents or guardians for other than the purpose for which the funds were placed in the custody of the parents or guardians.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 23.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

§ 1154. Fraud.

Any person who shall knowingly and intentionally by misrepresentation or deceit, or by false interpretation or by the use of false weights or measures, knowingly obtain any money or other property of value, shall be deemed guilty of fraud, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 24.

Cross References

Dangerous drugs, fraud, *see* 23 MLBS § 3.

Fraud and deceit, civil causes of action *see* 24 MLBS §§ 401, 402.

Government employees, summary dismissal, *see* 6 MLBS § 103.

Motor vehicles, fraudulent practices, *see* 19 MLBS § 301 et seq.

Pawnbrokers and junk dealers, *see* 18 MLBS § 209.

Procurement sanctions, *see* 7 MLBS § 49.

§ 1155. Issuing a Bad Check.

Any person who knowingly and intentionally issues or delivers a check for the purpose of obtaining the property, labor or services of another, knowing that it will not be paid by the depository, commits the offense of issuing a bad check. If the offender has an account with the depository, failure to make good the check within 15 days, after written notice of nonpayment has been received by the issuer is prima facie evidence that the person knew it would not be paid by the depository. A person convicted of issuing a bad heck shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 25.

§ 1156. Forgery.

Any person who shall, with intent to defraud falsely sign, or knowingly execute or alter any written instrument, shall be deemed guilty of forgery, and upon conviction thereof shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 26.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

§ 1157. Fraudulent Long Distance Telephone Calls.

Any person who obtains long distance telephone service by intentionally charging the cost thereof to a false or nonexistent telephone, or to the telephone number of another person without their knowledge or consent, or to a credit card number of another person or government or business without prior authority, shall be deemed guilty of an offense, and upon conviction may be sentenced to labor for a period of 180 days, and/or fine not to exceed \$500.00, in addition to any award of damages for the benefit of the injured party.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 15.

§ 1158. Receiving Stolen Property.

Any person who shall knowingly obtain control over stolen property knowing the property to have been stolen by another, and has the purpose of depriving the owner of the property, and knowingly uses, conceals or abandons, the property in such a manner as to deprive the owner of the property, or uses, conceals or abandons the property, knowing such use, concealment or abandonment probably will deprive the owner of the property, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 27.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

§ 1159. Extortion.

Any person who by making false charges against another or by any other means whatsoever, knowingly extorts any monies, goods, property or anything else of any value, shall be deemed guilty of extortion, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine of \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 29.

§ 1160. Malicious Mischief.

Any person who shall knowingly disturb injure, destroy or tamper with any livestock or other domestic animals or other property of another, shall be deemed of malicious mischief, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine of \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 30.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

Injury to public property, *see* 24 MLBS § 1201.

Intentional interference with personal property, civil causes of action, *see* 24 MLBS § 255.

§ 1161. Graffiti.

- (a) Any person subject to the jurisdiction of the Mille Lacs Band who is found, by a preponderance of the evidence, to have knowingly placed graffiti on any real or personal property on Band Lands, without the permission of the owner of the property or other legal authorization, is guilty of vandalism, which is a civil

misdemeanor, and is subject to a fine and other penalties as set forth in this section. As used in this § 1161:

- (1) **“Graffiti”** means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, roadway, fence, gate, building or other natural or man-made structure.
 - (2) **“Band Lands”** means lands owned or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.
 - (3) **“Juvenile”** means any person who is less than eighteen (18) years of age.
- (b) In any case arising under this section, it shall be presumed that the Mille Lacs Band and its entities did not give permission to any person to place graffiti on any property, vehicles, signs, fixtures, or furnishings belonging to the Mille Lacs Band or its entities unless such permission was in writing.
 - (c) Upon conviction of any person under this section for vandalism, the Court may, in addition to any fine and other penalties imposed, order the defendant to clean up, repair, or replace the damaged property. The Court may also order the defendant, and his or her parents or guardians if the defendant is a juvenile, to keep the damaged property or another specified property free of graffiti for up to one year.
 - (d) If a juvenile is personally unable to pay a fine imposed under this section, the parent(s) or guardian(s) of that juvenile shall be liable for payment of the fine.
 - (e) The Court may order any person ordered to perform community service or graffiti removal under this section to undergo counseling. If the person was under the influence of alcohol or other illegal substance, the Court may also require a drug and alcohol assessment and drug or alcohol treatment.
 - (f) **Penalties.**
 - (1) The maximum penalty for a first offense of vandalism under this § 1161 shall be a fine of \$250.00 and 80 hours of community service, plus full restitution to the victim. If the defendant is a juvenile still in school, community service shall be performed in a manner not to interfere with school.
 - (2) The maximum penalty for a second offense shall be a fine of \$500.00 per offense and 160 hours of community service, plus full restitution to the victim. If the offender is a juvenile, then the penalty may be taken from the parent or legal guardian.

- (3) The maximum penalty for a third and any subsequent offense of vandalism under this § 1161 is a \$1,000.00 fine and 200 hours of community service per offense, plus full restitution to the victim. If the defendant is a juvenile still in school, community service shall be performed in a manner not to interfere with school.
- (4) Upon a third or subsequent conviction for vandalism under this § 1161, the defendant may be banned from entering all Mille Lacs Band Government buildings, except for employment, to conduct business at the District Government Centers, or to obtain medical treatment at Band medical facilities. The Court may suspend or modify this sentence for good cause shown by defendant.

(g) **Prohibition against Selling or Furnishing Aerosol Paint to Minors.**

- (1) It shall be unlawful for any person, firm, or corporation subject to the jurisdiction of the Mille Lacs Band, except a parent, legal guardian, or supervising adult, to provide to any person any aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence in the form of a Band identity card or State driver's license that the person to whom the aerosol container is provided is 18 years of age or older.
- (2) It shall be unlawful for any person subject to the jurisdiction of the Mille Lacs Band who is under the age of 18 years to purchase an aerosol container of paint that is capable of defacing property.
- (3) Every Mille Lacs Band entity, and every retailer licensed by the Corporate Commission to do business with the Mille Lacs Band, which sells or offers for sale on or near Band Lands aerosol containers of paint, shall post a sign stating:
 - (i) "Any person subject to the jurisdiction of the Mille Lacs Band who knowingly or intentionally defaces real or personal property with paint on Band Lands is guilty of vandalism under Band law and shall be prosecuted to the full extent of the law."
- (4) It is unlawful for any person subject to the jurisdiction of the Mille Lacs Band to carry on his or her person and in plain view to the public an aerosol container of paint into any posted Band facility, park, playground, swimming pool, beach, or recreational area without valid written authorization from the Band.
- (5) It is unlawful for any person subject to the jurisdiction of the Mille Lacs Band who is under the age of 18 years to possess an aerosol container of paint while on any public highway, street, alley, way, or other public place on Band

Lands, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

- (6) Any person who is found guilty, by a preponderance of the evidence, of violating subparagraphs (1), (2), (4) or (5) of this paragraph (g) shall be guilty of a civil misdemeanor and subject to a maximum fine in the amount of \$250 per offense. The Corporate Commission shall revoke the license to do business with the Band of any retailer who fails to post the sign required by subparagraph (3) of this paragraph after providing fourteen (14) days written notice of such requirement to such retailer.
- (h) If the Court of Central Jurisdiction adjudges any provision of this section to be invalid, such judgment shall not affect any other provisions of this section not specifically included in the judgment.
- (i) Nothing contained in this section shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

Historical and Statutory Notes

Source:

Band Ordinance 29-03.

SUBCHAPTER 5

OFFENSES AGAINST PUBLIC ADMINISTRATION

Section

1201. Injury to Public Property.

1202. Misuse of USDA Donated Commodities.

1203. Bribery.

1204. Perjury.

1205. Resisting Lawful Arrest.

1206. Refusing to Aid an Officer.

1207. Obstructing Justice.

1208. Escape.

1209. False Report to Law Enforcement Officers.

1210. Disobedience to Lawful Orders of Court; Contempt.

1211. Violation of Approved Tribal Ordinance.

1212. Violation of Orders or Opinions.

1213. Impersonating Tribal Official or Other Person in Authority.

§ 1201. Injury to Public Property.

Any person who shall without proper authority, knowingly use or tamper with or knowingly or negligently injure any public property of the Band or property held for the benefit of the Tribes by the United States, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not exceed 180 days and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 31.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.
Malicious mischief, *see* 24 MLBS § 1160.

§ 1202. Misuse of USDA Donated Commodities.

Any person who shall, within the boundaries of the Non-Removable Mille Lacs Band of Chippewa Indians knowingly sell, trade, waste, or otherwise dispose of in an unauthorized manner USDA donated commodities issued by the Band and any person who knowingly received from another person as part of a sale, trade or other transaction any USDA donated commodities issued to that person by the Band, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00. The Court shall notify the Band Commodity Certifying Officer of any convictions under the provisions of this section.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 32.

§ 1203. Bribery.

Any person who shall knowingly give or offer to give any money, property or services, or anything else of value to another person with the intent to influence another in the discharge of his/her public duties or conduct, and any person who shall knowingly accept, solicit or agree to solicit, or accept any bribe, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days and/or a fine not to exceed \$500.00, and may be required by the Band Assembly to forfeit any Tribal office held by such person.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 34.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

§ 1204. Perjury.

Any person who shall knowingly in any judicial proceeding in the Court of Central Jurisdiction, falsely swear or interpret, or shall make a sworn statement or affidavit, knowing the same to be untrue, or shall induce or procure another person to do so, shall be deemed guilty of perjury and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 35.

§ 1205. Resisting Lawful Arrest.

Any person who shall knowingly, by force, violence or subterfuge, resist, or assist another person to resist a lawful arrest, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 36.

Cross References

Warrant, summons and arrest, *see* 24 MLBS § 4101 et seq.

§ 1206. Refusing to Aid an Officer.

Any person who shall neglect or refuse, without good cause, when called upon by any law enforcement officer to assist in the arrest of any person charged with or convicted of any offense, or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement, or in preventing the commission by another of an offense, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a

period of 180 days, and/or a fine not to exceed \$500.00 provided that no responsibility shall attach to the person assisting a law enforcement officer at the officer's request.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 37.

§ 1207. Obstructing Justice.

Any person who knowing a person is an offender, knowingly prevents or obstructs anyone from performing an act that might aid in the discovery or apprehension of an offender or suppresses by act of concealment, alteration or destruction any physical evidence that might aid in the discovery or apprehension of an offender, shall be deemed guilty of the offense of obstructing justice, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 38.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

§ 1208. Escape.

Any person who being in lawful custody for any offense, shall knowingly escape or who shall knowingly permit or assist another person to escape from lawful custody, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00. For purpose of this section "lawful custody" shall mean imprisonment of a person charged with or convicted of an offense detention of a person pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained, or for the protection of society.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 39.

§ 1209. False Report to Law Enforcement Officers.

Any person who knowingly gives false information to any law enforcement officer with the purpose of implicating another, reporting an offense or incident that he/she knows he/she has no such information shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 40.

§ 1210. Disobedience to Lawful Orders of Court; Contempt.

Any person who shall knowingly disobey any order, subpoena, warrant or command duly issued, made or given by the Court of Central Jurisdiction or any other officer thereof, or who shall knowingly fail to return to official detention following leave granted for a specific purpose or limited time, shall be deemed guilty of an offense and upon conviction thereof, shall be fined in an amount not exceeding \$500.00, and/or sentenced to labor for a period not to exceed 180 days. For purpose of this section "official detention" includes but is not limited to constraint incidental to release on bail.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 41.

Cross References

Judicial authority, *see* 5 MLBS § 101 et seq.

§ 1211. Violation of Approved Tribal Ordinance.

Any person who knowingly violates an Ordinance promulgated by the Legislative Branch of Government and legally in force, shall be deemed guilty of an offense, and upon conviction thereof, shall be fined in an amount not exceeding \$500.00, and/or sentenced to labor for a period not to exceed 180 days, or subjected to any other penalty as prescribed in the Ordinance.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 42.

Cross References

Legislative power, *see* 3 MLBS § 2.
Passage of laws, *see* 3 MLBS § 16.

§ 1212. Violation of Orders or Opinions.

- (a) Any person who shall fail to comply with the provisions of any lawful Executive Order, Secretarial Order, Commissioner's Order or Solicitor's Opinion shall be deemed guilty of an offense against the government, and upon conviction thereof, shall be sentenced to a fine not to exceed five hundred dollars and possible forfeiture of any office or employment opportunity presently held.
- (b) Any Band member who shall willfully violate any provision of any Executive Order, Secretarial Order, or Commissioner's Order shall be found guilty of a civil misdemeanor and may be sentenced to imprisonment for not more than 180 days and/or to a fine of not more than five hundred dollars (\$500.00) and/or revocation and suspension of all usufructuary rights under Band law for a period of up to five years.

Historical and Statutory Notes

Source:

Band Statute 1085-MLC-37, § 68.
Band Statute 1092-MLC-25, § 13.02.

Cross References

Commissioner's Orders, *see* 4 MLBS § 7.
Executive Orders, *see* 4 MLBS § 6.
Secretarial Orders, *see* 3 MLBS § 7.
Solicitor General's Opinions, *see* 4 MLBS § 18.

§ 1213. Impersonating Tribal Official or Other Person In Authority.

Any person who shall falsely impersonate or identify or represent himself/herself as an elected official, appointee(s), law enforcement or any other person of authority authorized by the Non-Removable Mille Lacs Band of Chippewa Indians, the United States, any State or any of its political subdivisions, for the purpose of inducing another to submit to such pretended official authority, or otherwise to act in reliance upon that pretense to his/her prejudice, shall be guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period of 180 days, and/or not to exceed \$500.00.

Historical and Statutory Notes

Source: Band Statute 1164-MLC-6, § 43.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.

SUBCHAPTER 6

OFFENSES AGAINST PUBLIC ORDER, HEALTH AND DECENCY

Section

- 1251. Carrying Concealed Weapons.**
- 1252. Handgun Registration.**
- 1253. Disorderly Conduct.**
- 1254. Maintaining A Public Nuisance. [Repealed].**
- 1255. Cruelty to Animals.**
- 1256. Game Violations.**
- 1257. Gambling.**
- 1258. Liquor Violations.**
- 1259. Sanitation and Public Health.**
- 1260. Contributing to Delinquency of Minor.**
- 1261. Curfew. [Repealed].**
- 1262. Off-Road Use of Motor Bikes, Cycles or Scooters.**

§ 1251. Carrying Concealed Weapons.

Any person who shall go about in public places armed with a dangerous weapon concealed upon his/her person, unless he/she shall have a permit signed by a Judge of the Court of Central Jurisdiction, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period of 180 days, and/or a fine not to exceed \$500.00, and the weapons so carried may be confiscated by the Court of may be seized at officers discretion. This Section does not apply to any law enforcement officer.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 44.

§ 1252. Handgun Registration.

All handguns shall be registered with the Department of Justice.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 44.01.

§ 1253. Disorderly Conduct.

- (a) Any person subject to the jurisdiction of the Mille Lacs Band of Ojibwe Indians who is found, by a preponderance of the evidence, to have engaged intentionally in any of the following behaviors on Band Lands or on a Mille Lacs Band school bus, knowing, or having reasonable grounds to know that such behavior will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a civil misdemeanor, and is subject to a fine in an amount not to exceed \$500.00 per offense:
- (1) Engages in brawling or fighting; or
 - (2) Disturbs a lawful meeting or assembly of persons without lawful authority; or
 - (3) Engages in offensive, obscene, abusive, or abusive conduct tending reasonably to arouse alarm, anger, or resentment in others or uses offensive, obscene, or abusive words which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace; or
 - (4) Blocks vehicular or pedestrian traffic without lawful authority; or
 - (5) Prevents the free ingress or egress to public or private places without lawful authority; or
 - (6) Makes a false report or warning of a fire, impending explosion or other catastrophe in a place in which such an occurrence would endanger human life; or
 - (7) Appears in a public or private place in an intoxicated and disorderly condition; or
 - (8) Creates a disturbance, while hosting or attending a party, so as to disrupt the peacefulness of the neighborhood or community through loud noises and/or fights or other obnoxious behavior; or
 - (9) Plays his/her music from any car, house or music player so as to create a disturbance to the neighbors or community members between the hours of 10:00 p.m. and 8:00 a.m.
- (b) The Tribal Police shall have authority to investigate any disturbance on Band Lands or on a Mille Lacs school bus. Upon reasonable suspicion, which may be based on

the complaint of another person, that any person subject to the jurisdiction of the Mille Lacs Band is engaging in or has engaged in disorderly conduct as defined in paragraph (a) of this section, the Tribal Police shall request that such conduct be immediately stopped. If the person refuses to immediately stop such conduct, such person shall be subject to arrest and to the maximum fine as stated in paragraph (a) of this section.

- (c) As used in this section, Band Lands means lands owned or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.
- (d) If the Court of Central Jurisdiction adjudges any provision of this Ordinance to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in the judgment.
- (e) Nothing contained in this section shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

Historical and Statutory Notes

Source:

Band Ordinance 27-03.

§ 1254. Maintaining a Public Nuisance.

[REPEALED].

Historical and Statutory Notes

Source:

Band Ordinance 30-03.

Cross References

Public Nuisance Ordinance, *see* 24 MLBS § 301 et seq.

§ 1255. Cruelty to Animals.

Any person who shall torture or cruelly mistreat any animals, shall be deemed guilty of an offense, and shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and to provide such care as the Court shall direct.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 47.

§ 1256. Game Violations.

Any enrolled member of the Non-Removable Mille Lacs Band of Chippewa Indians or any persons under the jurisdiction of this Court, who shall knowingly sell, trade, or give away to a non-member or offer for sale or trade any edible portion of any game fish, game bird or game animal, or protect any person from being apprehended, or charged with a violation of an existing game law in force and effect, or fail to report, to the proper authorities any person who sells or attempts to sell any edible portion of any game bird, game fish or game animal, or violates any rules or regulations as provided by Chapter 7 of the Band Code for the conservation of the fish and game of the Reservation shall be sentenced to labor for a period not to exceed 180 days and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 48.

Cross References

Natural Resource Protection Code, *see* 11 MLBS § 2001 et seq.

§ 1257. Gambling.

Any person who shall violate any law, rule or regulation established for the control or regulation of any game of chance on territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 49.

Cross References

Gaming control, *see* 15 MLBS § 1 et seq.

§ 1258. Liquor Violations.

- (a) Any person under the age of 21 who shall knowingly and intentionally possess or use any wine, beer, ale, whiskey or any article whatsoever which produces any intoxication; or any minors who shall appear in any public or private place(s) while under the influence of intoxicating liquor to any degree, shall be deemed guilty of a liquor violation offense, and upon conviction thereof, may be sentenced to a community service labor for period not to exceed 10 days for the first offense and 20 days for any repeat offense, and/or a fine not to exceed \$50.00 for the first offense and \$100.00 for any repeated offense. Upon any conviction for a second or more liquor violations under this Section, said person shall forfeit his/her right to any employment or youth program participation for a period not to exceed 180 days.
- (b) Any person who knowingly and intentionally purchases, transports or possesses any wine, beer, ale, whiskey, or any article whatsoever which produces alcoholic intoxication for or in any minor person or who shall consume any of the above with a minor person shall be deemed guilty of a liquor violation offense, and upon conviction thereof, may be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 50.

Cross References

Government employees, summary dismissal, *see* 6 MLBS § 103.
Juvenile delinquency, criminal procedure, *see* 24 MLBS § 4301 et seq.
Juvenile justice, *see* 8 MLBS § 101 et seq.

§ 1259. Sanitation and Public Health.

Any person who shall violate any rules or regulations enforced by any Administration of the Band with responsibility for the health and welfare of the persons under the jurisdiction of the Band as adopted by Commissioner's Order shall be guilty of an offense, and upon conviction thereof shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 51.

§ 1260. Contributing to the Delinquency of Minor.

Any person who shall knowingly contribute to the delinquency of a minor, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 54.

Cross References

Duty to report abuse or neglect, *see* 8 MLBS § 301 et seq.

Juvenile delinquency, criminal procedure, *see* 24 MLBS § 4301 et seq.

Juvenile justice, *see* 8 MLBS § 101 et seq.

Prohibited drugs, consumption by minors *see* 23 MLBS § 5.

§ 1261. Curfew.

[REPEALED].

Historical and Statutory Notes

Source:

Band Ordinance 31-03.

Cross References

Curfew Regulations, *see* 8 MLBS §§ 71, 72.

Duty to report abuse or neglect, *see* 8 MLBS § 301 et seq.

§ 1262. Off-Road Use of Motor Bikes, Cycles or Scooters.

The use of motor bikes, motorcycles or motor scooters is restricted to existing roads, and any person who knowingly or negligently uses such a vehicle on any other Reservation land, including trails designed for horseback or pedestrian travel, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §33.

Cross References

Traffic violations, *see* 19 MLBS § 501 et seq.

CHAPTER 3

PROCEDURE

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	2001
2. Appeals	2501
3. Certification of Questions of Law	3001
4. Creditors' Remedies	3301
5. Replevin	3501
6. Criminal Procedure	4001

Historical and Statutory Notes

1303-MLC-4, §§ 1-3 and 9.03 provide:

"Section 1. Purpose. The Purpose of this Act [see Subchapters I to III of this chapter] is to promote the general welfare, preserve and maintain justice, and to protect the rights of all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians consistent with a judicial philosophy of a search for truth and justice. This statute is enacted by the inherent aboriginal and sovereign rights of the members of the Non-Removable Mille Lacs Band of Chippewa Indians to be self-governing since time immemorial and by the authority invested in the Mille Lacs Reservation Business Committee under Article I, Section 3, Article VI, Sections 1 and 2, and Article XIII of the Constitution of the Minnesota Chippewa Tribe.

"Section 2. Scope of Amending Provision. Band Statute 1143-MLC-4 is hereby repealed in its entirety and replaced by the provisions of this statute.

"Section 3. Severability. If any provision of this Act is held invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid provisions and to this end, the provisions of this Band Statute shall be severable."

"Section 9.03. Sovereign Immunity. Nothing contained in this act shall be deemed or construed to be a waiver of sovereign immunity by the Non-Removable Mille Lacs Band of Chippewa Indians."

Cross References

Commercial entity licenses, denial, suspension, or revocation, *see* 18 MLBS § 109.

SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 2001. Definitions.
- 2002. Judicial Philosophy.
- 2003. Traditional Theory of Law of Mille Lacs Band.
- 2004. Principle of Law of Mille Lacs Band.
- 2005. Causes of Action.
- 2006. Effect of Criminal Cause of Action.
- 2007. Law Applicable in Civil Actions.
- 2008. Opinion and Orders of Court.
- 2009. Full Faith and Credit.
- 2010. Proceedings of Court: Public-At-Large.
- 2011. Record of Proceedings.
- 2012. Written Decisions Mandated.
- 2013. Statute of Limitations.
- 2014. Trial by Jury.
- 2015. Survival of Actions.

§ 2001. Definitions.

The following definitions shall be utilized for all cases before the Court of Central Jurisdiction.

- (a) **Elder** - An elder for purposes of this statute shall be an enrolled Mille Lacs Band member who has reached the chronological age of 55.
- (b) **Guardian Ad Litem** - A guardian who is appointed by a court to speak for or defend a minor or incompetent in any suit to which the minor or incompetent in any way may be a party.
- (c) **Incompetent** - A person who is insane, an imbecile, or feeble-minded, or is not mentally able to manage their affairs.
- (d) **Minor** - A person who is under the age of eighteen (18) years, unless otherwise specified.
- (e) **Parties** - The persons who take part in the performance of any act, or who are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defense of any legal proceeding.
- (f) **Party Aggrieved** - One whose right has been directly and injuriously affected by action of the court.

- (g) **Statute of Limitations** - A specified length of time after which no cause of action or right to sue exists.
- (h) **Summons** - A notice in writing to a defendant informing him/her that an action has been brought against him/her and judgment will be taken against him/her if he/she fails to answer the complaint within the prescribed time set forth therein.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 43.

Prior Laws:

Band Statute 1143-MLC-4, T. IX, § 4.

§ 2002. Judicial Philosophy.

The judicial philosophy of the Non-Removable Mille Lacs Band of Chippewa Indians is a product of the terms and conditions of our customs of life since time immemorial. Peace and harmony between the people of the Band is necessary to ensure the continued survival of the Anishinabe. At times the circle of peace and harmony amongst the people will be disrupted. This circle of life needs to be restored in a manner that permits the integrity of the individual to be maintained so that the community will continue to grow and prosper. It shall be the judicial philosophy of the Court of Central Jurisdiction to promote the traditional teachings of our elders that have served the people so well since the beginning of time; to apply these principles of life to resolve conflicts between individuals; to strengthen and help those who come before the Court so that they may experience a good life. To this end, proceedings in the Court of Central Jurisdiction shall not be adversarial but shall be a search for truth and justice.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 4.

Prior Laws:

Band Statute 1143-MLC-4, T. II, § 1.

Cross References

Executive hearings, procedure, *see* 4 MLBS § 13.

§ 2003. Traditional Theory of Law of Mille Lacs Band.

The theory of law of the Non-Removable Mille Lacs Band of Chippewa Indians is based upon a high regard for the concept of sha wa ni ma. It is one of our ways of life according to custom. The purpose of sha WA ni ma is to keep the people together as one. This purpose is good for all people. It serves to balance the forces of life and brings stability to the people. To achieve this

way of life, the laws of the Band shall be construed to balance the rights of the individual with the need to continue to co-exist in peace and harmony with one another. In this way, order will be preserved and justice shall be accorded to each person who has cause to appear before the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 5.

Prior Laws:

Band Statute 1143-MLC-4, T. II, § 2.

Cross References

Cultural actions, *see* 24 MLBS § 601 et seq.

§ 2004. Principle of Law of Mille Lacs Band.

The principle of law in the Court of Central Jurisdiction shall be a cooperative search for truth and justice amongst all persons coming before the Court as well as the Court itself. All individuals coming before the court share an equal obligation and responsibility in bringing forth the fact surrounding a particular vent that has given rise to a matter before the Court of Central Jurisdiction. To achieve this goal, all individuals who appear before the Court must adhere to basic principles of honor, respect, integrity, pity and kindness. Therefore, it shall be the mission of the court of Central Jurisdiction to actively search for truth within the principles of individual rights, privileges, honor, respect, integrity, pity and kindness to and for all persons who have cause to utilize the judicial system of the Non-Removable Mille Lacs Band of Chippewa Indians. To this end, the justices of the Court of Central Jurisdiction shall be bound.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 6.

Prior Laws:

Band Statute 1143-MLC-4, T. II, § 3.

§ 2005. Causes of Action.

The Court of Central Jurisdiction shall recognize all suits as prescribed by law and cases in equity.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 24.

Prior Laws:

Band Statute 1143-MLC-4, T. VIII, § 21.

§ 2006. Effect of Criminal Cause of Action.

A criminal cause of action shall not bar any available civil relief arising from the same set of circumstances or events in the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 10.01.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 21.01.

Cross References

Criminal causes of action, *see* 24 MLBS § 1001 et seq.

§ 2007. Law Applicable in Civil Actions.

- (a) In all civil cases the Court of Central Jurisdiction shall apply the written statutory and case law of the Non-Removable Mille Lacs Band of Chippewa Indians. In the event of the lack of written Band law, the Court shall apply any pertinent laws of the United States of America. In the event of the lack of existence of said written law, the Court shall apply any laws of the State of Minnesota that do not conflict with the unwritten customs and traditions of the Band since time immemorial. Where any doubt arises as to the customs and traditions of the Band, the court shall request the advice of qualified elders familiar with customs and tradition.
- (b)
 - (1) The Band Assembly hereby declares that the principles and rules of action, relating to the government of the Non-Removable Mille Lacs Band of Chippewa Indians and the security of those persons subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, which derive their authority solely from usages and customs of immemorial antiquity of the Non-Removable Mille Lacs Band of Chippewa Indians shall apply to civil causes of action in the Court of Central Jurisdiction, when such do not rest for

their authority upon any expressed or positive declaration of the will of the Band Assembly.

- (2) In all other causes of civil action that do not derive directly from usages and customs of immemorial antiquity of the Non-Removable Mille Lacs Band of Chippewa Indians or from any expressed and declared will of the Band Assembly in matters related to the government of the Band or the security of persons and property under the jurisdiction of the Band, the common laws of the United States of America shall prevail in the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 27.
Band Statute 1087-MLC-44, § 68.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 20.

§ 2008. Opinion and Orders of Court.

Each Justice and Judge shall be bound by the provisions of the Constitution of the Minnesota Chippewa Tribe, the laws of the Non-Removable Mille Lacs Band of Chippewa Indians and any applicable laws of the United States. Prior to the issuance of any opinion and order of the Court, each Justice and Judge shall consider and weigh unwritten cultural law, historical tribal legal opinions, and precedents of the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 29.

Prior Laws:

Band Statute 1143-MLC-4, T. VIII, § 29.

§ 2009. Full Faith and Credit.

Full faith and credit shall be given to public acts, records and civil judicial proceeding of all other reservations and all Federal and State jurisdictions that have enacted a full faith and credit provision in their Constitution or Statutes or on a case-by-case basis, have granted full faith and credit to judicial determinations of the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 25.

Prior Laws:

Band Statute 1143-MLC-4, T. VII, § 5.

§ 2010. Proceedings of Court: Public-At-Large.

The proceedings of the Court of Central Jurisdiction shall be open to the public except in matters involving minors. The presiding judge or justice may exclude the public from a proceeding upon the motion of any party or upon the Court's own motion for good cause as the court determines.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 35.

Prior Laws:

Band Statute 1143-MLC-4, T.VIII, § 29.

§ 2011. Record of Proceedings.

The Court of Central Jurisdiction shall maintain a record of all proceedings of the Court, which record shall include the title of the case, the parties, the names and addresses of all witnesses, the date of the hearing or trial, the name of the presiding judge, and the judgment together with any other facts or circumstances deemed important to the case.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 33.

Prior Laws:

Band Statute 1143-MLC-4, T. I, § 19.

§ 2012. Written Decisions Mandated.

The Court of Central Jurisdiction shall in all cases give written decisions, which shall be filed with the Clerk of Court along with all other papers in the case.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 34.

Prior Laws:

Band Statute 1143-MLC-4, T. VIII, § 8.

§ 2013. Statute of Limitations.

The following limitations on actions shall be utilized for civil cases before the Court of Central Jurisdiction:

- (a) An action may be commenced only within the time stated in this section unless a different time is specified by law. The time within which the action may be commenced starts at the time the act complained of was discovered, unless otherwise provided for by law.
- (b) All civil actions shall be commenced within six (6) years from the time the cause of action occurred in the case of contracts and within three (3) years in the case of harmful conduct, one (1) year from the time a cause of action arose as a result of an employee-employer relationship or the hiring or termination of an individual from employment, unless a different time is otherwise prescribed by law. An action shall be deemed to have been commenced for the purposes of this Section when a written complaint has been filed. The Statute of limitations shall not run while a person is a minor, incompetent, or serving in the armed forces of the United States. The time is tolled as to persons absent from the jurisdiction of the Band for the purpose of avoiding process.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 26.

Prior Laws:

Band Statute 1143-MLC-4, T. II, § 5.

Cross References

Finality of adoption judgment, *see* 8 MLBS § 626.

§ 2014. Trial by Jury.

- (a) The right to a trial by jury shall exist in criminal matters where a defendant is exposed to a fine great than \$500 or where an individual may be imprisoned and in civil cases where the plaintiff's claim exceeds one thousand dollars (\$1000). A trial by jury shall not be available in domestic relations, probate or cases in equity matters.
- (b)
 - (1) In cases where a jury may be requested, the request for a jury must be made in writing to the Clerk. The request for a jury may be made at any time after commencement of an action, but no later than five (5) days after the filing of the last pleading. The request for a trial by jury in civil matters must be

accompanied by a case or surety bond in the amount of one hundred (\$100) to cover the costs of the jury trial.

- (2) The failure of a party to request a jury, as required in paragraph (1) constitutes a waiver of a trial by jury.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 37.

Prior Laws:

Band Statute 1143-MLC-4, T. VI, § 1.

Cross References

Criminal procedure, jury trial, *see* 24 MLBS § 4201.

Right to a trial by jury, *see* 1 MLBS § 10.

§ 2015. Survival of Actions.

In the event any person has a claim against another person, whether arising on a contract or otherwise, and such person dies prior to final adjudication of said claim, that action may be continued or maintained by the descendant's personal representative.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, § 33.

Cross References

Death of adoption petitioner prior to adoption, *see* 8 MLBS § 618.

Wrongful death actions, *see* 24 MLBS § 551.

SUBCHAPTER 2

APPEALS

Section

2501. Notice of Appeal.

2502. Basis of Appeals.

2503. Nature of Appeal.

2504. Decision of Court of Appeals.

2505. Authority.

Cross References

Indian employment rights, appeal of Administration Policy Board decisions, *see* 18 MLBS § 424.

Juvenile offenders, appeals, *see* 8 MLBS § 148.

Prohibited drugs, automatic appeal of convictions, *see* 23 MLBS § 10.

§ 2501. Notice of Appeal.

A party aggrieved by a final judgment or other final order of the Court shall within thirty (30) days after the date of such judgment or order, file with the Clerk of Court a notice of intent to appeal, along with a twenty (\$20) dollar filing fee.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 38.

Prior Laws:

Band Statute 1143-MLC-4, T.VIII, § 2.

§ 2502. Basis of Appeals.

The following shall constitute lawful reasons for an appeal, which may include but not be limited to:

- (a) Irregularity in the proceedings of the Court, jury, or adverse party, or error of the Court, or abuse of discretion by which either party was prevented from having a fair trial; or
- (b) Misconduct of the jury or if any one (1) or more jurors have been induced to assent to any general or special verdict to a finding on any question submitted to them by the Court; or
- (c) Surprise which ordinary foresight could not have guarded against; or
- (d) Newly discovered evidence which could not, with reasonable care, have been discovered and produced at the trial; or
- (e) Insufficiency of the evidence to justify the verdict or other decision or that which is against the law; or
- (f) Error of law occurring at the trial as in ruling in the admission of evidence or in charging the jury or judicial rulings founded in objections; or
- (g) Prejudice on the part of the trial judge or abuse of discretion.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 39.

Prior Laws:

Band Statute 1143-MLC-4, T.VIII, § 3.

§ 2503. Nature of Appeal.

All appeals taken before the Court of Appeals shall be heard on the basis of the record of the proceedings, except where the petitioner is unable to procure a transcript of the proceedings through no fault of their own.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 40.

Prior Laws:

Band Statute 1143-MLC-4, T.VIII, § 5.

§ 2504. Decision of Court of Appeals.

The concurrence of a majority of the Justices of the Court of Central Jurisdiction is necessary to pronounce judgment. If a majority of justices does not concur, a judgment or order is affirmed. The Chief Justice shall assign a Justice the task of preparing a written opinion of the Court. Minority opinions shall not be permitted as official parts of the Court record. The opinion of an individual justice on any case shall not be disclosed to the public.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 42.

Prior Laws:

Band Statute 1143-MLC-4, T.VIII, § 7.

§ 2505. Authority.

The Court of Appeals shall have all the power and authority necessary to carry into effect all of its judgments, decrees and deliberations in the matters over which it has jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 41.

Prior Laws:

Band Statute 1143-MLC-4, T.VIII, § 6.

SUBCHAPTER 3

CERTIFICATION OF QUESTIONS OF LAW

Section

3001. Certification of Questions from Exterior Courts.

3002. Orders, Petitions or Motions for Answers to Questions.

3003. Certification of Questions to Exterior Courts.

3004. Uniformity of Construction.

§ 3001. Certification of Questions from Exterior Courts.

The Court of Appeals may answer questions of law certified to it by an exterior court when requested. The Court of Central Jurisdiction may answer questions of law of the Mille Lacs Band which may be determinative of a cause then pending in the certifying court when there is no controlling precedent in the decisions of the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 28.

Prior Laws:

Band Statute 1143-MLC-4, T.I, § 6.

§ 3002. Orders, Petitions or Motions for Answers to Questions.

The provisions of 24 MLBS §3001 may be invoked by legislative order, executive order or upon a petition of the Solicitor General or upon the Court's own motion or upon the motion of a party.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 28.01.

Prior Laws:

Band Statute 1143-MLC-4, T.I, § 6.01.

§ 3003. Certification of Questions to Exterior Courts.

The Court of Central Jurisdiction may order certification of questions of law to an exterior court when there are involved in any proceeding before the Court of Central Jurisdiction questions of law in the receiving jurisdiction which may be determinative of the cause then pending when there are no controlling precedents in the decisions of the foreign jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, § 28.02.

Prior Laws:

Band Statute 1143-MLC-4, T.I, § 6.05.

§ 3004. Uniformity of Construction.

This subchapter shall be construed so as to make uniform the law among those jurisdictions which have enacted a uniform certification of questions of law act.

Historical and Statutory Notes

Source:

Band Statute 1303-MLC-4, §28.03.

Prior Laws:

Band Statute 1143-MLC-4, T.I, § 6.07.

SUBCHAPTER 4

CREDITORS' REMEDIES

Section

3301. Due Process.

3302. Property Defined.

3303. Petitions to Court of Central Jurisdiction.

3304. Notice of Hearing.

3305. Findings, Orders and Bond.

3306. Protection of Petitioner's Rights.

3307. Order for Seizure of Property.

3308. Wage Deductions. [Repealed].

3309. Unlawful Removal or Disconnection of Property.

Cross References

Applicability to motor vehicle liens, *see* 19 MLBS § 18.
Applicability to watercraft liens, *see* 20 MLBS § 11.
Application of Truth in Lending Act, *see* 24 MLBS § 5.
Credit at seller's risk, *see* 18 MLBS § 202.

§ 3301. Due Process.

Any creditor be they a person, company, corporation, association, partnership, cooperative, utility and any other public or private commercial entity who engaged in any commercial activity whether it be selling in any goods or services of any material value or any other type of commercial transaction for the purchase of any goods or services with any person who resides on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, who has not received monetary compensation for the provision of said goods or services or any licensed commercial entity who provides a services, received payment for the service and failed to perform or deliver the goods or services, whereby such written or oral agreement has been entered into or said service or property was consumed or is located on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall not deprive any person of any property, real or personal, or any service absent due process of law in the Court of Central Jurisdiction pursuant to 1 MLBS § 8 and Article XIII of the Constitution of the Minnesota Chippewa Tribe.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 21.

§ 3302. Property Defined.

Property includes, but is not limited to, everything which is subject to ownership corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value which is or may be the subject of ownership, legal or beneficial or private as a result of a transaction of any type from one party to another. Services provided by public/private cooperatives, utilities, or public or private commercial entities are specifically included.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 21.01.

§ 3303. Petitions to Court of Central Jurisdiction.

Any person, company, corporation, association, partnership, cooperative, utility and any other public or private commercial entity including financial institutions who seek to deny any person subject to the jurisdiction of the Band of any property, with or without just cause, shall first petition the Court of Central Jurisdiction for a show cause hearing and a determination that said property may be lawfully removed from any said person or that services may be lawfully denied, or that compensation should be received or any other relief deemed appropriate and reasonable.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 21.02.

§ 3304. Notice of Hearing.

The Clerk of Court shall schedule a hearing within 30 days after receipt of the Petition. The Clerk shall submit a Notice of Hearing to the person against whom the action is being instituted. The Notice shall state that the person has a right to appear at this hearing on his own behalf or with an attorney. The person shall have a right to present defenses to the claim and to state the reasons why the property or service described in the Petition should not be taken or denied. The Petition shall clearly state a claim to the goods sought to be recovered or the services sought to be requested or denied. Finally, the Notice shall clearly state that if the person fails to appear at the hearing the Court has the authority to enter a default judgment on behalf of the Petitioner and direct that the above-described property be immediately taken from their possession or that services may be lawfully denied or that services must be performed or that compensation should be received or whatever appropriate or reasonable relief is requested.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 21.03.

§ 3305. Findings, Orders and Bond.

After a hearing, the Court shall order seizure of the property or denial of services from the person and deliver to the Petitioner, if the Petitioner has demonstrated the probability of success on the merits entitling the Petitioner to payment, possession or repossession or disconnection of property or service unless the Court makes the following findings: The person has shown a defense to the merits of the Petitioner's claim, the defense is a fair basis for litigation and the defense would, if established at hearing on the merits, entitle the person to retain possession of the property. In such cases where a defense on the merit is found to be fair, the person shall post a bond in the amount plus one-quarter of the Petitioner's monetary claim. This bond shall indicate said persons good faith to compensate the Petitioner in the event that the Court rules in favor of the Petitioner.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 21.04.

§ 3306. Protection of Petitioner's Rights.

If the Court makes the findings prescribed by 24 MLBS § 3305 and orders that the person may retain possession pending final decision on the merits, the Court shall enter a further order protecting the rights of the Petitioner to the extent possible. The order may require that the person make partial payment of the debt which may be due and that the payment shall be made either directly to Petitioner or into an escrow account that the person post a bond in an amount set by the Court, that the person make the property available for inspection from time to time, that the person be restrained from certain activities, including, but not limited to selling, disposing or otherwise encumbering the property, or any other provision the Court may deem just and appropriate.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 21.05.

§ 3307. Order for Seizure of Property.

An order for seizure of property shall: Identify the property to be seized or the disconnection of the serviced property; direct a law enforcement officer to seize the property or to accompany any Petitioner to seize or disconnect property pursuant to court order and specify that the Petitioner is authorized immediately or after a specified reasonable period of time to seek or otherwise dispose of property as a method of collection of any judgment debt.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 21.06.

§ 3308. Wage Deductions.

[REPEALED].

Historical and Statutory Notes

Source:

Band Ordinance 27-01.

§ 3309. Unlawful Removal or Disconnection of Property.

Any creditor be they a person, company, corporation, association, partnership, cooperative, utility and any other public or private commercial entity, who absent a lawful order from the Court of Central Jurisdiction, who shall attempt to remove or disconnect any property from any person under the jurisdiction of the Band, shall be deemed to have committed a property trespass offense in violation of 2 MLBS § 304(m) and the Solicitor General shall initiate civil action against said person seeking their removal and exclusion from lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians for a period of time not to exceed 180 days.

Historical and Statutory Notes

Source:

Band Statute 1090-MLC-47, § 21.08.

SUBCHAPTER 4-a

WITHHOLDING FROM EARNINGS AND PER CAPITA PAYMENTS

Section

- 3351. Definitions.**
- 3352. Withholding from Earnings.**
- 3353. Withholding from Per Capita Payments.**
- 3354. Ripeness.**
- 3355. Notice to Debtor; Hearing.**
- 3356. Priority.**
- 3357. Full Payment of Debts.**
- 3358. Notice to Creditor.**
- 3359. Duty of Creditor.**
- 3360. Sovereign Immunity of the Band.**
- 3361. Civil Procedure.**

Historical and Statutory Notes

The Preamble and §§ 1, 13 and 14 of Band Ordinance 27-01 (this Subchapter) provide:

“Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Title 24 of the Mille Lacs Band Statutes Annotated and repealing and replacing 24 MLBSA § 3308 and Court Order #38. The Band Assembly determines that it is in the best interests of the Band to limit the amount of earnings or other income that may be withheld from individuals under the jurisdiction of the Mille Lacs Band. The Band Assembly seeks to establish policies and procedures for a fair and effective method of debt collection in the Court of Central Jurisdiction.”

“§ 1. **Amendment to Title 24 and Repealing and Replacing 24 MLBSA § 3308.** 24 MLBSA §

3308 is repealed and replaced in its entirety by the provisions of § 2 of this Act and Title 24 of the Mille Lacs Band Statutes Annotated is amended to include the remaining sections of this Act.”

“§ 13. **Severability.** If any section, term or provision of this Act is held by the courts of the Mille Lacs Band to be illegal or in conflict with any existing Band Statute or other applicable law, the validity of the remaining sections, terms and/or provisions of this Act shall not be affected and shall retain the force of Band law.”

“§ 14. **Effective date.** The effective date of this Act shall be the day after it becomes law.”

The Title of Band Ordinance 46-05 is “An Ordinance to repeal 24 MLBSA § 3351, § 3353 and § 3357(Withholding from Per Capita Payments) in entirety and amending these sections so as to decrease the maximum percentage to be deducted from Band Member per capita payments.”

The Preamble and § 5 of Band Ordinance 46-05 provide:

“Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Title 24 of the Mille Lacs Band Statutes Annotated and repealing and replacing Sections 3351, 3353 and 3357 (Withholding from Per Capita Payments). The Band Assembly hereby determines that it is in the best interest of the Band to amend this statute in order to enact an effective system of debt collection in the Court of Central Jurisdiction.”

“§ 5. **Effective Date.** The effective date of this amendment to Title 24 of the Mille Lacs Band of Ojibwe statutes shall be the day after it becomes law.”

The title of Band Ordinance 37-12 is “An Ordinance amending Subchapter IV (Withholding from Earnings and Per Capita Payments) of Chapter 3 (Procedure) in Title 24 of the Mille Lacs Band Statutes Annotated entitled Judicial Proceedings which authorizes, in part, the withholding from per capita distribution. Hereafter, the right of outside creditors who are granted a Court Order from the Court of Central Jurisdiction will be denied the right to be paid from per capita distribution and will be limited to garnishment of any wages earned. Section 3356 (Priority) is amended to give first priority to child support payments/arrearages, federal tax liens, debts owed to individual Band Members who have obtained a judgment in the Court of Central Jurisdiction, and for debts owed to the Band or any political subdivision thereof. Minor amendments include the correction of typographical errors.”

The preamble of Band Ordinance 37-12 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Subchapter IV-a of Chapter 3 in Title 24 of the Mille Lacs Band Statutes Annotated to amend Sections 3351, 3352, 3353, 3356, 3357, 3358 and 3359. The Band Assembly determines that it is in the best interest of the Band to deny outside creditors the right to be granted payment of any per capita distribution and to restrict the same to wages earned. Similarly, the Band Assembly determines that it is in the best interest of the Band to allow Band Members who are granted a judgment in the Court of Central Jurisdiction against another Band Member to be given priority over debts owed to the Band.”

The title of Band Ordinance 38-12 is “An Ordinance amending Subchapter IV-a (Withholding from Earnings and Per Capita Payments) of Chapter 3 (Procedure) in Title 24 of the Mille Lacs Band Statutes Annotated entitled Judicial Proceedings which authorizes, in part, the withholding from per capita distribution to amend the language in Band Assembly Bill 14-04-37-12 adopted on this date.”

The preamble of Band Ordinance 38-12 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Subchapter IV-a of Chapter 3 in Title 24 of the Mille Lacs Band Statutes Annotated to amend the language in Band Assembly Bill 14-04-37-12."

The title of Band Ordinance 75-12 is "An Ordinance amending Subchapter IV-a (Withholding from Earnings and Per Capita Payments) of Chapter 3 (Procedure) in Title 24 of the Mille Lacs Band Statutes Annotated entitled Judicial Proceedings which authorizes, in part, the withholding from per capita distribution."

The preamble of Ordinance 75-12 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Subchapter IV-a of Chapter 3 in Title 24 of the Mille Lacs Band Statutes Annotated to amend § 3352 entitled "Withhold from Earnings," and § 3353 entitled "Withholding from Per Capita Payments" to authorize petitioners to obtain and effectuate criminal judgments in the Court of Central Jurisdiction; and amending § 3356 entitled "Priority" to incorporate such relief within the statute."

§ 3351. Definitions.

For the purpose of this Subchapter:

- (a) The term "**actual damages**" means an amount assessed pursuant to an adjudicated matter before a court of competent jurisdiction for damages actually incurred. Such damages do not include nominal, exemplary or punitive damages, or court costs or attorney fees.
- (b) The term "**earnings**" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, or otherwise, and includes periodic payments to a personal retirement program.
- (c) The term "**disposable income**" means that part of the income of any individual remaining after the required deduction from that income of any amounts, such as but not limited to, federal income tax, social security, state income tax, if any, pension deductions, and cost of health insurance coverage for obligor and dependents. Disposable income shall also include per capita payments.
- (d) The term "**garnishment**" means any legal or equitable procedure through which the earnings of an individual are withheld for payment of any lawful debt.
- (e) The term "**per capita payment**" means any distribution of gaming proceeds to members of the Mille Lacs Band pursuant to the Band's Net Gaming Revenue Allocation Plan as approved by the Secretary of the Interior pursuant to 25 U.S.C. § 2701 et seq., or any other distribution to a member of the Mille Lacs Band that is designated a "per capita payment" by Band statute. No Band Member and no other person or entity shall have any right, title, interest or entitlement in or to any per capita payment unless and until the payment is made. The rights, if any, of judgment

creditors or other persons or entities to obtain a share of a per capita payment when it is made are governed by §§ 3352 through 3359 of this Title.

- (f) The term “**political subdivision**” shall mean the Corporate Commission of the Mille Lacs Band of Ojibwe as defined in 16 MLBS § 101 or any other entity defined in Band Statutes as a political subdivision of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 2.
Band Ordinance 46-05, § 1.
Band Ordinance 37-12, §§ 1, 3351.
Band Ordinance 38-12, §§ 1, 3351.

§ 3352. Withholding from Earnings.

As an ancillary proceeding to (1) a civil or criminal action for the recovery of money filed in the Court of Central Jurisdiction, or (2) a civil judicial proceeding, public act or record granted full faith and credit by the Court of Central Jurisdiction pursuant to 24 MLBS § 2009, the Court of Central Jurisdiction shall have the authority, pursuant to its subject matter jurisdiction as described in 5 MLBS § 111, to order the Office of Management and Budget to withhold from the earnings of any person to which a debt judgment or judgment for child support or arrearages has been obtained and remit the amount withheld to the judgment creditor. Except in circumstances of child support payment or arrearages, the earnings of an individual shall not be withheld in excess of ten percent (10%) of the individual’s disposable income. Except as specifically provided in this Section or controlling Federal law, the Court shall not order any withholding from the earnings of any person to satisfy any judgment or other claim.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 3.
Band Ordinance 37-12, §§ 1, 3352.
Band Ordinance 38-12, §§ 1, 3351.
Band Ordinance 75-12, §§ 1, 3351.

§ 3353. Withholding from Per Capita Payments.

- (a) As an ancillary proceeding to (1) a civil or criminal action for the recovery of money filed in the Court of Central Jurisdiction, or (2) a civil judicial proceeding, public act or record granted full faith and credit by the Court of Central Jurisdiction pursuant to 24 MLBS § 2009, the Court of Central Jurisdiction shall have the authority, pursuant to its subject matter jurisdiction as described in 5 MLBS § 111, to order the Office of Management and Budget to withhold and remit portions of per capita payments from

Band Members for the sole purpose of satisfying a judgment or a lien against the Band Member to whom the per capita payments are payable that is:

- (1) In favor of the United States Internal Revenue Service;
 - (2) For child support payments or arrearages;
 - (3) In favor of an individual Band member, provided that the Court shall not order the withholding and remission of any portion of a per capita payment to satisfy a judgment or lien obtained in connection with a loan or other transaction relating to a bail bond or other similar transaction; or
 - (4) In favor of the Band or any political subdivision thereof;
 - (5) For actual damages expressed in the form of a restitution award incorporated within a final criminal judgment involving: (1) assault and battery as either defined herein, 24 MLBS §1102, or pursuant to equivalent federal, state or tribal law; 2) an offense committed against the property of another as defined in Subchapter 4 of Chapter 3 herein, or equivalent federal, state or tribal law.
 - (6) Except for judgments or liens for child support payments or arrearages, the total amounts withheld from a per capita payment to satisfy the judgments or liens listed above shall not exceed thirty percent (30%) of the payment. In cases involving judgments or liens for child support payments or arrearages, the total amount withheld shall not exceed fifty percent (50%) of the payment. Except as specifically provided in this Section or controlling Federal law, the Court shall not order any withholding from a per capita payment to satisfy any judgment or other claim.
- (b) The Band's Court of Central Jurisdiction shall have no authority to award punitive, special, exemplary, treble, or consequential damages, and any such award shall be null and void and of no effect.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 4.
Band Ordinance 46-05, § 2.
Band Ordinance 37-12, §§ 1, 3353.
Band Ordinance 38-12, §§ 1, 3353.
Band Ordinance 75-12, §§ 1, 3353.

§ 3354. Ripeness.

The Court of Central Jurisdiction shall not initiate a withholding proceeding pursuant to this Subchapter for any debt that is not at least 60 days past due, except in circumstances of current child support payments and arrearages.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 5.

§ 3355. Notice to Debtor; Hearing.

In any withholding proceeding pursuant to this Subchapter, the debtor shall receive notice as required by the Mille Lacs Band Rules of Civil Procedure. Upon such notice to the debtor, the Court of Central Jurisdiction shall hold a hearing, at the debtor's request, to permit the debtor to dispute the financial obligation in question. The burden of proof shall be on the debtor to show that a proposed garnishment would be improper.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 6.

§ 3356. Priority.

The Court of Central Jurisdiction shall give priority to any withholding from earnings or per capita payments in the following order:

- (a) Satisfaction of a judgment or lien in favor of the United States Internal Revenue Service, except to the extent that Federal law allows priority to be given to satisfaction of a judgment or lien for child support payments or arrearages;
- (b) Satisfaction of a judgment or lien for child support payments or arrearages;
- (c) Satisfaction of a judgment or lien in favor of individual Band Members who obtained the judgment lien in the first instance in the Court of Central Jurisdiction, provided that the Court shall not order the withholding of any portion of a per capita payment to satisfy a judgment or lien obtained in connection with a loan or other transaction relating to a bail bond or other similar transaction;
- (d) Satisfaction of a judgment or lien in favor of non-Band member petitioners who obtained a criminal judgment lien in the Court of Central Jurisdiction;

- (e) Satisfaction of a judgment or lien in favor of the Band or any political subdivision thereof;
- (f) Satisfaction of any other judgment in favor of a Band Member for which withholding from earnings is authorized under § 3352 of this Subchapter, provided that the Court shall not order the withholding of a portion of a per capita payment to satisfy such a judgment; and
- (g) Satisfaction of any other judgment in favor of a non-Band Member for which withholding from earnings is authorized under § 3352 of this Chapter, provided that the Court shall not order the withholding of a portion of a per capita payment to satisfy such a judgment.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 7.
Band Ordinance 37-12, §§ 1, 3356.
Band Ordinance 38-12, §§ 1, 3356.
Band Ordinance 75-12, §§ 1, 3356.

§ 3357. Full Payment of Debts.

The Court of Central Jurisdiction shall order the withholding of portions of a person's earnings or from a Band Member's per capita payments in accordance with §§ 3352 through 3356 of this Subchapter until such time as the judgments or liens for which portions of the person's earnings or the Band Member's per capita payments are being withheld are paid in full or discharged by the judgment creditor.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 8.
Band Ordinance 46-05, § 4.
Band Ordinance 37-12, §§ 1, 3357.
Band Ordinance 38-12, §§ 1, 3357.

§ 3358. Notice to Creditor.

The Court of Central Jurisdiction shall duly inform any creditor for whom a prior order of withholding has been modified by the Court due to an order of withholding granted in favor of a subsequent creditor with higher priority.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 9.
Band Ordinance 37-12, §§ 1, 3358.
Band Ordinance 38-12, §§ 1, 3358.

§ 3359. Duty of Creditor.

Any creditor who has obtained an order of withholding pursuant to this Chapter must notify the Court of Central Jurisdiction within five (5) days when a judgment subject to such an order has been repaid in full or discharged by the creditor. The failure of a creditor to provide such notice to the Court shall constitute grounds for a finding of contempt by the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 10.
Band Ordinance 37-12, §§ 1, 3359.
Band Ordinance 38-12, §§ 1, 3359.

§ 3360. Sovereign Immunity of the Band.

Nothing contained in this Act shall be construed as a waiver of the sovereign immunity of the Mille Lacs Band of Ojibwe or any of its political subdivisions.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 11

§ 3361. Civil Procedure.

All actions pursuant to this Title shall be conducted in accordance with the Mille Lacs Band Rules of Civil Procedure. The Office of Solicitor General shall develop appropriate forms for use in any action pursuant to this Title. The Court of Central Jurisdiction shall retain copies of such forms for use by any party.

Historical and Statutory Notes

Source:

Band Ordinance 27-01, § 12.

SUBCHAPTER 4-b

COLLECTION OF DEBTS AND FINES OWED TO THE MILLE LACS BAND

Section

3401. Finding and Determinations.

3402. Authority.

3403. Notice of Process.

Historical and Statutory Notes

The Preamble to Band Ordinance 41-94 (this Subchapter) provides:

“Preamble. Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Chippewa Indians for the purpose of amending Band Statute 1090-MLC047.”

§ 3401. Finding and Determination.

- (a) The Band Assembly hereby finds and determines that the Non-Removable Mille Lacs Band of Chippewa Indians desires to be a government that is consistently financially responsible in order to better serve our people now and in the future.
- (b) The Band Assembly finds and determines that the Personal Loan Program(s) of the Non-Removable Mille Lacs Band of Chippewa Indians have many delinquent loans outstanding.
- (c) The Band Assembly finds and determines that the Court of Central Jurisdiction has imposed fines, many of which are unpaid or uncollectable.
- (d) The Band Assembly finds and determines that outstanding or delinquent loans and unpaid court-imposed fines are a threat to the financial and political integrity of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Ordinance 41-94, § 1.

§ 3402. Authority.

- (a) Under this Subchapter, the Secretary/Treasurer of the Mille Lacs Band shall exercise the authority of the Mille Lacs Band, to withhold any funds that may be payable to any person, for use as a set-off against any debt or court ordered fine owed by that person to the Mille Lacs Band.

- (b) The Secretary of Treasury shall withhold any funds payable to individuals only if the debt or fine owed is delinquent by 45 days or more.
- (c) The Secretary of Treasury shall give 20 days written notice prior to any set-off withholding that may occur.

Historical and Statutory Notes

Source:

Band Ordinance 41-94, § 2.

§ 3403. Notice of Process.

- (a) For purposes of this Subchapter, notice is given by the Secretary/Treasurer placing a Notice of Withholding in the mail and a sending of notice by certified mail return receipt requested to the last known address. If either of the two Notice of Withholding mailings does not return to the Secretary/Treasurer within a 10 day time period notice has been given.
- (b) In the event that an individual disputes the set-off withholding they have 10 days from the date of the mailing of the notice to file a petition with the Court of Central Jurisdiction. The burden of proof shall be on the petitioning party to show that the withholding is improper or that they were not given notice.
- (c) The Court shall hold a hearing within 10 days of the filing of a petition pursuant to this Subchapter. Notice must be given to the Secretary/Treasurer within 5 days of the filing of a petition as described in paragraph (b) of this Section or by any disinterested third-party personally serving the Secretary of Treasury.
- (d) Relief that the Court may grant pursuant to this Subchapter is limited to a determination of whether the set-off withholding is proper.
- (e) The withholding provisions of this Subchapter are in addition to any other withholding provisions in Band Law.
- (f) The provisions of this Subchapter are intended to apply retroactively to any debt that was incurred previous to the enactment of this Subchapter.

Historical and Statutory Notes

Source:

Band Ordinance 41-94, § 3.

SUBCHAPTER 5

REPLEVIN

Section

- 3501. Applicability.**
- 3502. Claim for Immediate Delivery of Property.**
- 3503. Affidavit.**
- 3504. Direction to Law Enforcement Officer.**
- 3505. Security Furnished by Plaintiff.**
- 3506. Seizure of Property.**
- 3507. Service of Defendant.**
- 3508. Third Party Claims or Return to Defendant.**
- 3509. Sureties and Deposits.**
- 3510. Officer's Report.**

Cross References

Recovery of possession of person property, *see* 21 MLBS § 501 et seq. Right to peaceful possession of property, *see* 24 MLBS § 203.

§ 3501. Applicability.

The replevin procedure set out in this subchapter shall be utilized for all cases before the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 11.

§ 3502. Claim for Immediate Delivery of Property.

The plaintiff, in an action to recover the possession of personal property, at the time of issuing the summons or at any time before answer, may claim the immediate delivery of such property as provided in this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 11.01.

§ 3503. Affidavit.

When an immediate delivery is claimed, an affidavit must be made by the plaintiff or by someone in his behalf stating that the plaintiff is the owner of the property claimed, is lawfully entitled to the possession of it, or that he had a lawful lien against such property, payment of which is in default. The facts of such ownership or right to possession must be set forth along with a detailed description of the property. Said affidavit must state that the property is wrongfully detained by the defendant and that the alleged cause of the detention of the property, according to his best knowledge, information, and belief that the property has not been taken for a tax, assessment against the property of the plaintiff, or, if so seized, that it is by law exempt from such seizure. Said affidavit must also state the actual value of the property.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 11.02.

§ 3504. Direction to Law Enforcement Officer.

The plaintiff, after completing and endorsing the affidavit required by 24 MLBS § 3503, may require any law enforcement officer of the Non-Removable Mille Lacs Band of Chippewa Indians to take the property from the defendant and deliver it to the plaintiff.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 11.03.

§ 3505. Security Furnished by Plaintiff.

Before possession of any property may be taken by the plaintiff, he must furnish to the Court sufficient security in the form of cash or sureties. The surety shall be at least double in amount the value of the property as stated in the affidavit. If the defendant shall be later adjudged the rightful owner of the property or shall be entitled to possession of the property, the security provided by the plaintiff shall be used in any recovery by the defendant against the plaintiff.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 11.04.

§ 3506. Seizure of Property.

Upon receipt of the affidavit, endorsement, and security by the Band law enforcement officer, the officer shall take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall keep it in a safe place and deliver it to the party entitled property. If the property of any part thereof be concealed in a building or enclosure, the officer shall publicly demand its deliver. If it is not delivered, then the officer must obtain a search warrant from the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 11.05.

Cross References

Search warrants, *see* 24 MLBS § 4107.

Unreasonable searches and seizures, *see* 1 MLBS § 2.

§ 3507. Service of Defendant.

The officer, at the time of taking any property, shall serve on the defendant a copy of the affidavit, endorsement, and proof of security or cash bond and notice of levy showing the property taken by delivering the same to the defendant personally, if he can be conveniently found, or to his agent from whose possession the property is taken; if neither can be found, by leaving the papers at the usual place of abode of either, with some person of suitable age and discretion.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 11.06.

§ 3508. Third Party Claims or Return to Defendant.

- (a) If the property taken be claimed by any other person than the defendant or his agent, and such person shall make an affidavit of his title thereto and right to possession thereto, stating such right and title, and serve the same upon the officer, the officer shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff shall indemnify the officer against such claim by deposit with the Clerk of Court of security in amount and sufficiency as required in the original affidavit for the delivery. No claim to such property by any other person than the defendant or his agent shall be valid against the officer, unless made as provided; and notwithstanding such claim when so made, he may retain the property a reasonable time to demand such indemnity.

- (b) The defendant may retain or require the return of the property by giving the Clerk of Court, within three (3) days after the taking, sufficient security or cash deposit of an amount not less than was required by the plaintiff for the delivery.
- (c) If the defendant or a third party does not require a return of the property within three (3) days after the taking and service of papers on the defendant, the property shall be delivered to the plaintiff.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, §§ 11.07-11.09.

§ 3509. Sureties and Deposits.

- (a) Sureties may be provided by any person or company allowed by the Court. Security may be given in the form of a cash deposit. A receipt shall be given by the Clerk of Court and the deposit shall remain in the custody of the Court until the Court shall make an order disposing of it.
- (b) The defendant or plaintiff may require the surety of the other to prove the validity of their sureties. The plaintiff and defendant shall be given seven (7) days from date of service of a copy of the affidavit to question the validity of the surety. If it is not questioned within seven (7) days, it shall be deemed waived and cannot later be questioned by either party.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, § 11.10-11.11.

§ 3510. Officer's Report.

- (a) Within twenty (20) days after taking the property, the officer shall be notified by the Clerk of the Court in writing to make a verified report of his proceedings in taking and disposing of the property, and file the same together with the original affidavit, endorsement, or security and a notice of his copy of levy, with the Clerk of the Court.
- (b) The failure or neglect of the officer to make such verified report of his proceedings shall not, however, void his proceedings under the affidavit and endorsement but shall render him liable for contempt of court.

Historical and Statutory Notes

Source:

Band Statute 1144-MLC-5, T.II, §§ 11.12, 11.13.

SUBCHAPTER 6

CRIMINAL PROCEDURE

<u>Part</u>	<u>Section</u>
A. General Provisions	4001
B. Complaint	4051
C. Warrant, Summons, and Arrest	4101
D. Preliminary Proceedings	4151
E. Trial	4201
F. Sentence	4251
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Historical and Statutory Notes

Band Statute 1164-MLC-6, § 61 provides:

"Section 61. Severability. If any provision of this Chapter [see this subchapter and Chapter 2 of this title] or the application thereof to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of the Chapter which can be given effect without the invalid provision or application and to this end the provisions of this Chapter are declared severable."

Cross References

Historical preservation, criminal offenses, *see* 10 MLBS § 602.

PART A

GENERAL PROVISIONS

Section

4001. Definitions.

4002. Court of Central Jurisdiction.

4003. Jurisdiction over Persons.

4004. Rights of Defendant.

4005. Deposit and Disposition of Fines, Fees and Other Payments Made to Court.

§ 4001. Definitions.

- (a) Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charge against him/her, receiving his/her plea and setting bail as appropriate in accordance with 24 MLBS §4158 and Court orders promulgated thereof.
- (b) Arrest is the taking of a person into custody in the manner authorized by law, in order that he/she may be held to answer for a criminal offense.
- (c) Bail is the security given for the purpose of insuring that the accused is present at the impending criminal proceedings.
- (d) A complain is a written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense.
- (e) A search warrant is a written order in the name of the Band, signed by a Justice of the Court of Central Jurisdiction and directed to a law enforcement officer ordering him/her to conduct a search, to seize items or property or place to be searched and shall particularly describe the items to be seized and brought before the Justice.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §§ 62, 67, 71, 75.

§ 4002. Court of Central Jurisdiction.

The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from 24 MLBS Chapter 2 (§ 1001 et seq.) or this subchapter. Nothing in this subchapter shall be construed as a waiver of sovereign immunity of the Non-Removable Mille Lacs Band of Chippewa Indians in any state or federal court of competent jurisdiction. Associate Justices of the Court of Central Jurisdiction shall have original jurisdiction over all causes of action which arise from any provisions of 24 MLBS Chapter 2 and this subchapter. A Criminal Division is hereby created in the Court of Central Jurisdiction to here causes of actions arising from 24 MLBS Chapter 2 and this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 59.

Cross References

Subject matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 4003. Jurisdiction Over Persons.

The criminal jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall extend and apply to enrolled members of the Non-Removable Mille Lacs Band of Chippewa Indians, enrolled members of any of the other five Bands of the Minnesota Chippewa Tribe and those Indian Persons who reside on Lands subject to the territorial jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 60.

Cross References

Court of Central Jurisdiction, criminal jurisdiction over persons, *see* 5 MLBS § 112.

§ 4004. Rights of Defendant.

In all criminal prosecutions, the defendant shall have the following rights: the right to be present throughout the proceeding and to defend himself/herself with proper decorum or at his/her own expense by counsel, the right to know the nature and cause of the charge and to receive a copy of the complaint, the right to meet the witnesses against him/her face to face, the right to compulsory process to obtain the testimony of witnesses in his/her behalf and physical evidence, the right to a speedy public trial by an impartial jury, but the defendant may waive the right to a speedy trial by requesting a delay, the right not to testify. The failure of the defendant to testify shall not be construed against him/her or commented upon by the Solicitor General.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 85.

Cross References

Civil Rights Code, *see* 1 MLBS § 1 et seq.

§ 4005. Deposit and Disposition of Fines, Fees and Other Payments Made to Court.

All monies paid to the Court of Central Jurisdiction as a result of the provisions of this subchapter or 24 MLBS Chapter 2 (§ 1001 et seq.) or other lawful orders of the Court, shall be paid to the Clerk of Court, who shall issue a receipt.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 90.

Cross References

Special surcharge tax on fines, *see* 22 MLBS § 509.

PART B

COMPLAINT

Section

4051. Initiation of Prosecution.

4052. Form and Content of Complaint.

4053. Screening and Submission of Complaints.

4054. Joinder of Offenses.

4055. Joinder of Defendants.

4056. Amendment of Complaint.

§ 4051. Initiation of Prosecution.

All criminal prosecutions for violation of the Code of Offenses shall be initiated by complaint. A complaint may be initiated by the Solicitor General, any law enforcement officer of the Band or any person under the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 62.

§ 4052. Form and Content of Complaint.

Complaints shall:

- (a) Be in writing and in the name of the Non-Removable Mille Lacs Band of Chippewa Indians and be signed by the complaining witness sworn to and witnessed before the Court of Central Jurisdiction's Solicitor General and/or before a duly qualified Justice of the Court of Central Jurisdiction.
- (b) Contain a statement by the complaining witness describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained,
- (c) State the name or description of the person alleged to have committed the offense, and

- (d) State the section of 24 MLBS Chapter 2 which has been violated.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 62.01.

§ 4053. Screening and Submission of Complaints.

The Chief Justice of the Court of Central Jurisdiction may designate an individual or individuals who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Complaints shall then be submitted without delay to a Justice of the Court of Central Jurisdiction to determine whether probable cause exists and whether a warrant or summons shall be issued. However, provisions of Band Statute which required mediation and Court orders which require Show Cause Hearings shall apply prior to any formal filing of a complaint with the Clerk of Court.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 62.02.

§ 4054. Joinder of Offenses.

A complaint may charge two or more different offenses connected together in their commission arising out of the same incident. If two or more complaints are filed against the same defendant in same Court, the Court may order them to be consolidated. The Solicitor General is not required to elect between the different offenses or counts set forth in the complaint, but the defendant may be convicted of any number of offenses charged and each offense which the defendant is convicted may be stated in the verdict or the finding of the Court. However, the Court may in the interests of justice and for good cause shown, in its discretion, order that the different offenses counts set forth in the complaint be tried separately. An acquittal of one or more counts shall not be deemed an acquittal of any other count.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 63.

§ 4055. Joinder of Defendants.

Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same series of acts constituting an offense or offenses. All of the defendants need not be charged in each count. When two or more persons are included in the same charge,

at any time before the defendants begin their defense, on the application of the Solicitor General, the Court may direct any defendant to be discharged so that he/she may be a witness for the Band. When two or more persons are included in the same complaint, and the Court is of the opinion that there is not sufficient evidence against one defendant, it must order him/her to be discharged before the evidence is closed, so that he/she may be a witness for his co-defendant.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 63.01.

§ 4056. Amendment of Complaint.

A complaint may be amended in matters of substance at any time before the defendant pleads, without leave of Court. The Court may permit any charge to be amended as to form at any time before verdict or the finding of the court if no additional or different offense is charged and if the substantive rights of defendants are not prejudiced. No charge will be dismissed because of a defect in form which does not prejudice a substantial right of the defendant.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 64.

PART C

WARRANT, SUMMONS AND ARREST

Section

- 4101. Arrest Warrants.**
- 4102. Summons in Lieu of Warrant to Arrest.**
- 4103. Prerequisites for Arrest.**
- 4104. Time of Making Arrest.**
- 4105. Summons in Lieu of Arrest.**
- 4106. Notification of Rights at Time of Arrest.**
- 4107. Search Warrants.**
- 4108. Search Without Warrant.**
- 4109. Stop and Frisk.**
- 4110. Inventory of Seized Property.**

Cross References

Chief Law Enforcement Officer, powers and duties, *see* 24 MLBS § 1055.
Juvenile justice, warrants and taking into custody, *see* 8 MLBS § 102 et seq.
Motor vehicles, police powers, *see* 19 MLBS § 501 et seq.

Natural resources, officers, powers and duties, *see* 11 MLBS § 2601 et seq; 19 MLBS §§ 501, 503.

Resisting lawful arrest, *see* 24 MLBS § 1205.

Unreasonable searches and seizures, *see* 1 MLBS § 2.

Watercraft violations, arrest without warrant, and notice in lieu of summons, *see* 20 MLBS §§ 405, 406.

§ 4101. Arrest Warrants.

- (a) If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, or from examination upon oath of witnesses, that there is probable cause to believe an offense has been committed, a warrant for the arrest of the defendant shall be issued by the Court. Every Justice of the Court of Central Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall have the authority to issue such warrants. An arrest warrant shall be in writing and in the name of the Non-Removable Mille Lacs Band of Chippewa Indians, specify the name or description and address, if known, of the person to be arrested, state the date of issuance of the warrant, describe the offense charged, be signed by the issuing Justice, command that the person against whom the complaint was made be arrested and brought before the Court issuing the warrant.
- (b) A warrant to arrest shall be by a duly qualified enforcement officer. No warrant to arrest shall be valid unless it bears the signature of a duly qualified Justice of the Court of Central Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. The warrant may specify the amount of bail.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 65.

§ 4102. Summons in Lieu of Warrant to Arrest.

When authorized to issue a warrant of arrest, a duly qualified Justice of the Court of Central Jurisdiction may, in lieu thereof, issue a summons commanding the accused to appear before the Court at a specified time and place, to answer to the charge. If a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 66.

§ 4103. Prerequisites for Arrest.

- (a) No law enforcement officer shall arrest any person for a violation of 24 MLBS Chapter 2 except when the officer shall have a warrant signed by a Justice of the Court of Central Jurisdiction commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued, or the offense shall occur in the presence of the arresting officer, or the officer shall have probable cause to believe that the person to be arrested has committed an offense and the existing circumstances require an immediate arrest.
- (b) When the accused has been arrested without a warrant, a complaint shall be filed forthwith for the Court of Central Jurisdiction to review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of the arraignment.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §§ 67.01, 67.02.

§ 4104. Time of Making Arrest.

An arrest may be made on any day and at any time of day or night, except that a person cannot be arrested pursuant to an arrest warrant, in his/her home at night, unless so directed by the Justice in writing on the arrest warrant.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 68.

§ 4105. Summons in Lieu of Arrest.

When otherwise authorized to arrest a suspect without a warrant, a law enforcement officer may instead issue to such person a summons to appear before the Court of Central Jurisdiction at a stated time and place, and answer to the charge. The summons shall contain the same information as a warrant, except that it may be signed by a law enforcement officer. If a defendant fails to appear in response to such a summons, a warrant for his/her arrest shall be issued.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 69.

§ 4106. Notification of Rights at Time of Arrest.

Upon arrest the suspect shall be advised of the following rights: that he/she has the right to remain silent, that any statements made by him/her may be used against him/her in Court, that he/she has the right to obtain counsel at his/her own expense.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 70.

Cross References

Assistance of counsel, *see* 1 MLBS § 6.

Self-incrimination, *see* 1 MLBS § 4.

§ 4107. Search Warrants.

- (a) Every Justice of the Court of Central Jurisdiction shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of the Court.
- (b) No warrant of search and seizure shall be issued except upon statement of fact sufficient to show probable cause that a search will discover stolen, embezzled, contraband, or otherwise criminally possessed property, property which has been or is being used to commit a criminal offense, or property which constitutes evidence of the commission of a criminal offense. Such probable cause shall be supported by a written and sworn statement based upon reliable information and particularly describing the place or things to be searched and things to be seized.
- (c) Warrants of search and seizure shall only be executed by law enforcement officers. The executing officer shall return the warrant to the Court of Central Jurisdiction within the time limit shown on the face of the warrant, which in no case shall be longer than ten days from the date of issuance. Warrants not returned within such time limits shall be void.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 71.

Cross References

Replevin, seizure of property, *see* 24 MLBS § 3506.

§ 4108. Search Without Warrant.

No law enforcement officer shall conduct any search without a valid warrant except incident to making a lawful arrest or with consent of the person being searched, or person lawfully in possession of the object or place to be searched, or who is reasonably believed to be in lawful possession or when he/she has probable cause to believe that the person searched may be armed and the officer conducts a frisk search, or when the search is of a moving vehicle and the officer has probably cause to believe that it contains contraband, stolen or embezzled property.

Historical and Statutory Notes

Source: Band Statute 1164-MLC-6, §72.

Cross References

Prohibited drugs, possession in motor vehicle, *see* 23 MLBS § 7.

Seizure and confiscation, certain substances and vehicles containing them, *see* 19 MLBS § 503.

§ 4109. Stop and Frisk.

- (a) A law enforcement officer may stop any person he/she observes in circumstances that give the law enforcement officer reasonable cause to suspect that the person has committed, or is committing, or is about to commit an offense involving the use or attempted use of force against a person, or theft, damage or destruction of property, if the stop is reasonable necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.
- (b) A law enforcement officer may stop any person he/she finds near the scene of the offense that the law enforcement officer has reasonable cause to suspect has just been committed if the law enforcement officer has reasonable cause to suspect that the person has knowledge of material facts needed to aid to the investigation of the offense, or the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.
- (c) A law enforcement officer who has lawfully stopped a person under this section may frisk that person and take other reasonable cause to suspect that the person is armed and presently dangerous to the law enforcement officer or another person present, and take possession of any object that the law enforcement officer discovers during the frisk if the law enforcement officer has probable cause to believe the object is a deadly weapon.
- (d) A law enforcement officer who has lawfully stopped a person under this section may demand of the person his/her name and his/her present or last address.
- (e) A law enforcement officer who has lawfully stopped a person under this section shall inform the person, as promptly as possible under the circumstances, and in any case

before questioning the person, that he/she is a law enforcement officer and that the stop is not an arrest, but rather a temporary detention for an investigation, and that upon complete of the investigation the person will be released unless he is arrested.

- (f) After the authorized purpose of the stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the law enforcement officer shall allow the person to go unless he/she has arrested the person.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 73.

§ 4110. Inventory of Seized Property.

Law enforcement officers shall make an inventory of all property seized by warrant or otherwise, and a copy of such inventory shall be left with the persons from whom the property was taken.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 74.

PART D

PRELIMINARY PROCEEDINGS

Section

4151. Time of Arraignment.

4152. Reading of Complaint and Advice of Rights.

4153. Appearance at Arraignment.

4154. Receipt of Pleas at Arraignment.

4155. Record.

4156. Bail--Release Prior to Trial.

4157. Bail--Release by Law Enforcement Officer.

4158. Dismissal.

4159. List of Witnesses.

4160. Production of Evidentiary Materials for Inspection.

4161. Notice of Interposed Defense.

4162. Suppression of Evidence Illegally Seized or Involuntary Confession or Admission.

4163. Time to Prepare for Trial.

§4151. Time of Arraignment.

Arraignment shall be held in open Court without unnecessary delay after the accused is taken into custody, and in no instance, shall arraignment be later than 72 hours after an accused is detained, taken into custody, or held under the temporary commitment order signed by a Justice of the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 75.01.

§ 4152. Reading of Complaint and Advice of Rights.

Before an accused is required to plead to any criminal charge, the Justice shall prove the accused with a copy of the complaint, read to the accused and determined that he/she understands the complaint and the section of the Mille Lacs Band Statutes Annotated which he/she is charged with violating, including the maximum authorized penalty, and advise the accused that he/she has the right to remain silent, to secure bail, to be tried by jury, to cross-examine the witnesses against him/her, to call witnesses in his/her behalf, to be represented by counsel at his/her own expense and that the arraignment will be postponed should he/she desire to consult with lay or professional counsel.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 75.02.

§ 4153. Appearance at Arraignment.

The accused has the right to appear personally for the arraignment; however, the accused may elect to appear through counsel.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 75.03.

§ 4154. Receipt of Pleas at Arraignment.

- (a) If the accused pleads "not guilty" to the charge, the Justice shall then inform him/her of a trial date and set conditions for bail prior to trial.

- (b) If the accused pleads "guilty" to the charge, the Justice shall determine that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights which he/she is waiving by the plea. The Justice may then impose sentence, or defer sentencing for a reasonable time, in order to obtain any information he/she deems necessary for imposition of a just sentence. The accused shall be afforded an opportunity to inform the Court of extenuating circumstances or facts in mitigation of the sentence.
- (c) If the accused refuses to plead, the Justice shall enter a plea of not guilty on his/her behalf.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 76.

§ 4155. Record.

The Court must prepare and keep a record of all arraignment proceedings.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 76.03.

§ 4156. Bail--Release Prior to Trial.

Every person charged with any offense before the Court of Central Jurisdiction shall be entitled to release from custody, pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

- (a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.
- (b) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.
- (c) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.
- (d) Release after deposit by the accused or a bondsman of the bond, in either cash or other sufficient collateral in an amount specified by the Justice or bail schedule. The Justice, in his/her discretion, may require that the accused post only a portion of the total bond. The full sum becomes due if the accused fails to appear as ordered. In all

cases wherein the bail is determined to be necessary, bail must be reasonable in amount and the amount shall be sufficient to assure compliance with the conditions set forth in the bail, not oppressive, commensurate with the nature of the offense charged, considerate of the financial ability of an accused, considerate of the defendant's record, employment status and family background.

- (e) Release after execution of a bail agreement by two reliable members of the Band who shall appear before a Justice of the Court of Central Jurisdiction and execute whatever agreement is necessary to assure the appearance of the person at any time lawfully required.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 77.

Cross References

Excessive bail, *see* 1 MLBS § 7.

§ 4157. Bail--Release by Law Enforcement Officer.

Any law enforcement officer authorized to do so by the Court of Central Jurisdiction may admit an arrested person to bail pursuant to the bail schedule or release upon personal recognizance. The law enforcement officer shall have available a bail schedule prepared by the Court of Central Jurisdiction which shall be used for setting money bond, where such condition or release is deemed necessary. Any law enforcement officer who refuses to release an accused on bail, or who specifies a bail condition which the accused is unable to satisfy shall bring such accused before a Justice of the Court of Central Jurisdiction for review of the release conditions at the first available opportunity and without unnecessary delay.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 78.

Cross References

Excessive bail, *see* 1 MLBS § 7.

§ 4158. Dismissal.

The Court may either on its own motion or upon the application of the Solicitor General and in furtherance of justice, order a complaint to be dismissed. The reasons for the dismissal shall be set forth in an order entered upon the minutes.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 79.

§ 4159. List of Witnesses.

The prosecution shall furnish the defendant a current list of witnesses to be used in connection with the trial. This list shall include the names and addresses of the witnesses.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 80.

§ 4160. Production of Evidentiary Materials for Inspection.

Upon a motion of either party, within a reasonable time before trial, the Court may require all parties to produce all documents, papers or things which each party intends to use as evidence at the trial. Inspection of such materials shall take place in the Court's presence. The Court shall exclude from evidence all materials not presented for inspection unless good cause is shown for failure to comply.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 80.01.

§ 4161. Notice of Interposed Defense.

At the time of entering a plea of not guilty, or later if for good cause, the Court permit, the defendant shall furnish the prosecution written notice of intent to interpose the defense of insanity, self-defense or alibi. The defendant shall also furnish a list of witnesses to be called in support of such defense.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 80.02.

§ 4162. Suppression of Evidence Illegally Seized or Involuntary Confession or Admission.

A defendant may move the Court to suppress any confession or admission given by him/her on the grounds that it was not voluntary. A defendant may move the Court to suppress any evidence obtained by an unlawful search and seizure. Such motions must be in writing and served upon the prosecution before trial, unless good cause is shown. At least 10 days notice of such motions must be given upon hearing, if the motion is granted, the confession, admission or evidence shall not be admitted as evidence against the defendant.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 81.

§ 4163. Time to Prepare for Trial.

After plea, the defendant shall be entitled to a reasonable time to prepare for trial.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 82.

PART E

TRIAL

Section

4201. Jury Trial.

4202. Order of Procedure.

4203. Special Instructions.

4204. Verdict.

§ 4201. Jury Trial.

Any person accused of an offense for which imprisonment is a possible penalty shall be granted a jury trial, upon his/her request made at the time of arraignment. The Justice shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law. The jury shall deliberate in secret and return a verdict of guilty or not guilty. The Justice shall render judgment in accordance with the jury verdict.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 83.

Cross References

Jury trial, generally, *see* 24 MLBS § 2014.

Right to jury trial, *see* 1 MLBS § 10.

§ 4202. Order of Procedure.

The rules of Court procedure relating to the conduct of trials shall apply to trials held pursuant to this subchapter, with the additional provisions set out in 24 MLBS §§ 4203, 4204.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 84.

§ 4203. Special Instructions.

When the evidence is concluded if either party desires special instructions to be given to the jury, such party should submit them to the Justice in writing. Outside the presence of the jury, the opposing party or parties and their counsel shall have reasonable time to examine the requested instructions and argue to the Court for their adoption or rejection. The instructions shall then be settled by the Justice.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 84.01.

§ 4204. Verdict.

After the close of evidence, the Justice shall render a verdict or in a jury trial, the Justice may direct a verdict of acquittal. Except in case of directed verdict, the jury shall retire to determine a verdict after the charge. All instructions, physical evidence and notes taken by the jurors shall be available to them. The jury shall remain in the charge of the bailiff appointed by the Court until discharged by the Justice. During its deliberation, the jury may return to Court to request further instructions from the Justice or request that the Clerk read portions of the transcript of any testimony in the case. The jury must render a verdict of "guilty" by a two-thirds vote or "not guilty" on every allegation in the complaint. After the verdict of the jury has been announced to the Justice, or in case the jury is unable to reach a verdict, the Justice shall discharge the jury.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 84.02

PART F

SENTENCE

Section

4251. Acquittal.

4252. Penalties.

4253. Payment of Fines by Installments.

4254. Considerations in Sentencing.

4255. Probation.

4256. Parolee.

Cross References

Excessive fines or cruel and unusual punishments, *see* 1 MLBS § 7.

Pardons and commutations of sentences, *see* 4 MLBS § 6.

§ 4251. Acquittal.

If a judgment of acquittal is rendered the defendant must be immediately released.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 86.

§ 4252. Penalties.

- (a) Any person who has been convicted in the Court of Central Jurisdiction of an offense shall be sentenced to one or a combination of the following penalties:
- (1) Imprisonment for a period not to exceed the maximum permitted by the provision defining the offense, which in no case shall be greater than six months, and which can also include a work or school release program.
 - (2) A money fine in an amount not to exceed the maximum permitted by the provision defining the offense, which in no case shall be greater than \$5,000.00 per offense.

- (3) Community Services for the benefit of the Band.
- (4) Rehabilitative measures.
- (b) In addition or in lieu of any of the above penalties, the Court may require an offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person through the surrender of the property, the payment of money damages, or the performance of any other act for the benefit of the injured party.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, §§ 86.01, 86.02

Cross References

Special surcharge tax on fines, *see* 22 MLBS § 509.

§ 4253. Payment of Fines by Installments.

If a convicted offender is unable to pay forthwith a money fine assessed under 24 MLBS § 4252, the Court shall allow him/her to make reasonable installment payments to the Clerk of Court at specified intervals until the entire sum is paid, or sentence him/her to labor for the benefit of the Band in order to discharge a fine at the rate of \$10.00 per day. If the offender defaults on such payments the Court may fine him/her in contempt of Court and imprison him/her accordingly, or after notice to the offender, collect the unpaid balance from the offender's per capita payments or other property.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 86.03

§ 4254. Considerations in Sentencing.

In determining the character and duration of the sentence which shall be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed and whether the offense was malicious or willful, and whether the offender has made efforts to make amend and shall give due consideration to the extent of the defendant's resources and the needs of his/her dependents.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 86.04.

§ 4255. Probation.

- (a) Where a sentence of imprisonment has been imposed on a convicted offender, the Court of Central Jurisdiction may in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the Court, provided that the period of probation shall not exceed the maximum term of sentence set for such offense.
- (b) Any person who violates the terms of his/her probation may be required by the Court to serve the sentence originally imposed or such part of it as the Court may determine to be suitable, giving consideration to all the circumstances provided that such revocation of probation shall not be ordered without a hearing before the Court at which time the offender shall have the opportunity to explain his/her actions.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 87.

§ 4256. Parolee.

- (a) Any person who shall without misconduct, serve one-half of the sentence imposed shall be eligible for parolee under such reasonable conditions as set by the Court.
- (b) Any person who violates the conditions of his/her parolee may be required by the Court to serve the whole of the original sentence, provided that such revocation of parolee shall not be ordered without a hearing before the Court at which time the offender shall have the opportunity to explain his/her actions.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 88.

PART G

JUVENILE DELINQUENCY

Section

4301. Exclusion of Public from Hearing.

4302. Rights of Accused.

4303. Disposition in Lieu of Sentence.

4304. Records.

4305. Violations Heard in Criminal Division.

Cross References

Contributing to delinquency of minor, *see* 24 MLBS § 1260.
Juvenile offenders, *see* 8 MLBS § 101 et seq.
Liquor violations, *see* 24 MLBS § 1258.

§ 4301. Exclusion of Public from Hearing.

Whenever the person under the ages of 14 years is accused of committing one of the offenses of this Band Statute, the general public shall be excluded from the hearing, except under petition of the juvenile, the Court in its discretion, may hear and determine the case in a public hearing.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 89.

§ 4302. Rights of Accused.

The juvenile shall be entitled to have counsel with him/her at his/her own expense, shall be allowed to present, confront and cross-examine witnesses under oath, shall be entitled to adequate notice of charges against him/her and the privilege against self-incrimination shall apply to any statement the juvenile may have made before the trial and at the trial. Adequate notice of the charges against a juvenile shall also be given to the parents or guardian of the juvenile. A standard of guilt to be employed is that the juvenile must be found guilty beyond a reasonable doubt.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 89.01.

Cross References

Civil Rights Code, *see* 1 MLBS § 1 et seq.

§ 4303. Disposition in Lieu of Sentence.

In lieu of sentence the Court may place the juvenile under supervision of a responsible person or institution, selected by the Justice for a designated period or may take such other action as may be deemed advisable in the circumstances.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 89.02.

§ 4304. Records.

- (a) All law enforcement records concerning a juvenile except traffic records, shall not be open to public inspection of their contents disclosed to the public, unless ordered by the Court.
- (b) All law enforcement records and records of the Court pertaining to a juvenile shall be physically sealed when the youth reaches the age of 18 years. These records shall not be open to inspection except by a written order from the Court.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 89.04.

§ 4305. Violations Heard in Criminal Division.

Exceptions to 24 MLBS § 4303 are that the following violations may be heard in either the Criminal Division or the Human Resources Division of the Court of Central Jurisdiction and the records may be open to inspection if tried in either the Criminal Division on any traffic, liquor law, or fish and game violation.

Historical and Statutory Notes

Source:

Band Statute 1164-MLC-6, § 89.05.

Cross References

Natural Resource Protection Code, enforcement, *see* 11 MLBS § 2601 et seq.
Traffic violations, *see* 19 MLBS § 401 et seq.

TITLE 25 – [REPEALED]

[REPEALED].

Historical and Statutory Notes

Source:

Band Ordinance 48-20.

TITLE 26 – COMPENSATION OF ELECTED OFFICIALS

Section

38. Definitions.

39. Administration.

40. Salary, Salary Increase, Effective Date.

41. Severance.

42. Pension.

43. Pension Loan.

44. Withholding of Taxes.

45. Notice of Pension and/or Severance Amount, Timing of Benefit, Reduction, Denial or Termination.

46. Amendment.

Historical and Statutory Notes

The title of Ordinance 40-13 is:

“An Ordinance amending the Act known as the Compensation of Elected Officials and numbered in the Mille Lacs Band Statutes as Title 26 that encompasses the compensation, severance and pension plan for the Chief Executive, Secretary-Treasurer, and District Representations.”

The preamble of Ordinance 40-13 provides:

“It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Title 26 (previously amended by Bill 15-02-73-12) referred to as the Compensation of Elected Officials numbered in the Mille Lacs Band Statutes as Title 26.”

Section 1 of Ordinance 40-13 states that, “Title 26 of Mille Lacs Band Statutes is hereby amended and replaced as follows.”

§ 1. Definitions.

The terms defined in this Title shall have the meanings given them in this section.

- (a) **“Beneficiary”** means the individual(s) that is named on the Beneficiary Designation Form by the former elected official to receive any remaining severance and/or pension amount upon the death of the former elected official.
- (b) **“Elected Officials”** mean the Chief Executive, Secretary-Treasurer, and the District Representatives.
- (c) **“Elected Office”** means the positions held by the duly elected Chief Executive, Secretary-Treasurer, and District Representatives.
- (d) **“Length of Service”** means the years, months, weeks, and days, that a duly elected official has been in elective office. This time shall be calculated consecutively as well as non-consecutively taking into account any breaks of service. The time shall be calculated from the date the elected official takes the oath of office to the date that an official vacates elective office.
- (e) **“Pension”** means the monthly amount, based on length of service in elective office, that an individual is deemed qualified to receive after leaving elective office.
- (f) **“Pensioner”** means a former elected official who is eligible to receive a pension.
- (g) **“Pension Loan”** means a loan made to a current elected official or former elected official that is capped at 50% of his/her vested amount, but no more than \$20,000.00, according to the terms of this Pension Plan.
- (h) **“Retirement”** means the time after the date that an elected official has officially vacated his/her office for retirement purposes.
- (i) **“Salary”** means the gross annual rate of pay of elected officials for their employment with the Band calculated before any deductions.
- (j) **“Severance”** means the monthly payment representing 80% of the former elected official’s salary that is paid to the former elected official in the first six (6) months after leaving office.
- (k) **“Vacate or vacating”** means that an elected official no longer holds elective office for any reason.
- (l) **“Years of Service”** means the number of years an elected official serves in any elective office either consecutively or non-consecutively.

Historical and Statutory Notes

Source:

Band Ordinance 40-13, § 2.

§ 2. Administration.

The Commissioner of Finance shall administer the provisions of this Title and he/she shall also supply annual reports to the Band Assembly and Chief Executive to ensure that the Plan remains fully funded.

Historical and Statutory Notes

Source:

Band Ordinance 40-13, § 3.

§ 3. Salary, Salary Increases, Effective Date.

- (a) Newly elected officials, current elected officials, and those returning to elected office shall receive a salary based on the elective office held and the total number of years of service in any elective office.
- (b) Salary levels shall be adjusted annually for each respective elected office in accordance with the following:
 - (1) Chief Executive.

First year: \$175,000.00

To be adjusted annually in the amount of \$5,000.00.
 - (2) Secretary-Treasurer.

First year: \$175,000.00

To be adjusted annually in the amount of \$5,000.00.
 - (3) District Representatives.

First year: \$150,000.00

To be adjusted annually in the amount of \$5,000.00.
- (c) Salary is not to exceed \$240,000.00 after annual adjustments regardless of years/terms of service.

- (d) Effective date. This salary system is effective for any elected official in office on or after July 10, 2012.

Historical and Statutory Notes

Source:

Band Ordinance 40-13, § 4.

§ 4. Severance.

- (a) Former elected officials shall, for a period of six (6) months after vacating office, receive a monthly severance equal to eighty percent (80%) of the salary they received in their last month in elective office. If a former elected official dies prior to the end of the six (6) month period, the obligation to pay severance shall be payable to his/her designated beneficiary.
- (b) **Effect of recall, removal, or conviction.** An elected official who has been recalled or removed from elective office by official action for theft, robbery, burglary embezzlement, fraud, or other similar act against the Band or any Band entity, or has been determined by a court of competent jurisdiction to have committed another similar civil or criminal act against the Band or any Band entity while in elective office, may have their severance reduced, denied or terminated by majority vote of the Joint Session. Such denial of severance is final and may not be appealed to the Court of Central Jurisdiction.
- (c) Severance pay may be garnished only through petitioning the Court of Central Jurisdiction and only for debts owed to the Mille Lacs Band of Ojibwe.
- (d) **Effective date.** This section is effective for any elected official in office on or after July 10, 2012, with the exception of any restriction as noted in subsection (b) above.

Historical and Statutory Notes

Source:

Band Ordinance 40-13, § 5.

§ 5. Pension.

- (a) Former elected officials shall receive a monthly pension for the total cumulative number of years in elective office in the amount prescribed in subsection (d) of this section beginning on the first day of the seventh (7th) month after vacating elective office. Each elected official qualified to receive a pension shall designate a beneficiary on the Beneficiary Designation Form and such form shall be kept in a confidential file in the office of the Commissioner of Finance.

- (b) Former elected officials shall qualify for a pension based on the total cumulative number of years served in any elective office according to the dollar amount shown in subsection (d) below.
- (c) **No pension while in elective office.** If an elected official who has been receiving or is scheduled to receive a pension returns to elective office, his/her pension shall be suspended until the elected official vacates elective office. This sub-section is not intended to include those amounts that an elected official may access as per the Pension Loan guidelines in § 6 of this Title.
- (d) **Pension amount.** Former elected officials shall receive the following pensions:

Total cumulative years of service:	<u>1-2</u>	<u>over 2</u>
Monthly pension, plus interest:	\$1,500	\$2,500

- (e) **Effect of recall, removal, or conviction.** An elected official who has been recalled or removed from elective office by official action for theft, robbery, burglary, embezzlement, fraud, or other similar act against the Band or any Band entity, or has been determined by a court of competent jurisdiction to have committed another similar civil or criminal act against the Band or any Band entity while in elective office, may have their pension reduced, denied or terminated by a majority vote of the Joint Session. Such denial of a pension is final and may not be appealed to the Court of Central Jurisdiction.
- (f) **Effect of Death of Former Elected Official.** If a former elected official dies prior to the end of his/her pension entitlement period, any remaining monthly payments shall be payable to his/her designated beneficiary as named on the Beneficiary Designation Form. In the case of an individual beneficiary, if the beneficiary dies prior to the end of the Band's obligation to pay monthly pension payments to the beneficiary, the Band's obligation shall end as of the beneficiary's date of death and no further payments will be made. If two or more beneficiaries are designated, the surviving beneficiaries shall be paid the full, or equal to 100%, of the remaining monthly payments.
- (g) **Judicial and administrative garnishment.** Pension may be garnished only through petitioning the Court of Central Jurisdiction and only for debts owed to the Mille Lacs Band of Ojibwe.
- (h) It is the intent of this section to have an effective date of July 9, 2002, the date that the pension plan for elected officials was initially approved. However, the effective date of the Beneficiary Designation Form shall be June 1, 2013. **It is not intended that this Pension Plan be retroactive for any former elected official who was not in office on this Title's initial effective date of July 9, 2002.**

Historical and Statutory Notes

Source:

Band Ordinance 40-13, § 6.

§ 6. Pension Loan.

- (a) Former and current elected officials may apply in writing to the Commissioner of Finance for a loan up to an amount equaling 50% of his/her vested pension, but never more than \$20,000.00.
- (b) All Pension Loans must be paid back to the Pension fund over a period of the lesser of: (1) five (5) years; or (2) the former or current elected official's remaining severance or pension term as of the loan date. The Commissioner of Finance will accept such payments on behalf of the Band.
- (c) Any former or current elected official who requests a Pension Loan must sign a promissory note to the Band.
- (d) Interest on the Note will be charged according to the Wells Fargo Bank N.A.'s prime borrowing rate in effect at the Note's inception.
- (e) Interest earned on the Note would be credited to the pension account.
- (f) There shall be only one Pension Loan in effect at any one time. Additional borrowings would require a consolidation of old and new amounts into a new Note with new terms according to this Title.
- (g) Monthly payments of principal and interest on the Note will be withheld against the former or current elected official's pension, severance, per capita and/or payroll payments.
- (h) The Commissioner of Finance will be responsible for administering the granting of and collections on Pension Loans according to the terms of this Title.
- (i) The effective date of this section is May 22, 2012.

Historical and Statutory Notes

Source:

Band Ordinance 40-13, § 7.

§ 7. Withholding Taxes.

The Commissioner of Finance shall withhold all taxes as required by applicable law.

Historical and Statutory Notes

Source:

Band Ordinance 40-13, § 8.

§ 8. Notice of Pension and/or Severance Amount, Timing of Benefit, Reduction, Denial or Termination.

- (a) **General notice of amount and timing of benefit.** The Commissioner of Finance shall notify a pensioner or former elected official, within sixty (60) days after vacating elective office, of their eligibility for a pension and/or severance. The notice shall contain the amount of the pension and/or severance, timing of periodic payment, and other pertinent information.
- (b) **Notice for reduction, denial, or termination.** The Commissioner of Finance shall notify a pensioner or former elected official in writing in the event of any change in the amount or timing of their pension and/or severance, or if a pensioner or former elected official is to have a pension and/or severance denied or terminated. The notice shall contain the reasons for the change, denial, or termination.

Historical and Statutory Notes

Source:

Band Ordinance 40-13, § 9.

§ 9. Amendment.

In regard to compensation, the elected officials reserve the right to review and amend the compensation plan in even numbered years after July 10 of that year. Any amendments to the severance or pension language may be made in any year. The pension plan is a fully funded plan and is intended to remain as such.

Historical and Statutory Notes

Source:

Band Ordinance 40-13, § 10.

TITLE 27 – EMERGENCY MANAGEMENT

Section

1. Findings.
2. Definitions.
3. Authorities of the Chief Executive.
4. Declaration of State of Emergency.
5. Termination of State of Emergency.
6. Accountability and Reporting.
7. Coronavirus Relief Funds.

Historical and Statutory Notes

The title of Band Ordinance 27-20 is: “An Ordinance to provide for the emergency management of the Non-Removable Mille Lacs Band of Chippewa Indians.”

Section 1 of Band Ordinance 27-20 states that, “This act shall be cited as the Emergency Management Act.”

Section 2 of Band Ordinance 27-20 states that, “The Band Assembly establishes Title 27 within the Mille Lacs Band Statutes Annotated, which will be titled ‘Emergency Management.’”

The title of Band Ordinance 60-20 is “An Ordinance appending Title 27 (Emergency Management), authorizing the Commissioner of Finance to take certain actions on behalf of the Band pertaining to the receipt of federal Coronavirus Aid, Relief, and Economic Security Act funding.”

The preamble of Band Ordinance 60-20 states: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of appending Title 27 (Emergency Management) to authorize the Commissioner of Finance to take certain actions on behalf of the Band pertaining to the receipt of federal Coronavirus Aid, Relief, and Economic Security Act funding.”

Section 1 of Ordinance 60-20 states that, “Title 27 (Emergency Management) is appended to add the following responsibilities and authorities of the Commissioner of Finance, to be sectioned as Title 27, § 7).

§ 1. Findings.

The Band Assembly finds it necessary to:

- (a) Confer upon the Chief Executive all emergency management powers;
- (b) Establish an emergency operations plan for the protection of public health, life, property, and general well-being adequate to cope with disasters resulting from natural and man-made causes; and

- (c) Provide for the coordination of all emergency management functions with comparable functions of the federal, state, and local units of government and of private agencies.

Historical and Statutory Notes

Source:

Band Ordinance 27-20, § 1.

§ 2. Definitions.

As used in this Title:

- (a) **“Emergency or disaster”** means an event or set of circumstances which:
 - (1) Demands immediate action to protect public health, life, and property; or
 - (2) Reaches such degree of destructiveness as to warrant the Chief Executive declaring a state of emergency.
- (b) **“Public place”** means any location that the Band government maintains for the use of the public under the territorial jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Ordinance 27-20, § 2.

Cross References

Children and Families, Definition of Emergency, *see* 8 MLBS § 72(c).

§ 3. Authorities of the Chief Executive.

At all times other than a state of emergency, the Chief Executive is authorized to:

- (a) Establish a Tribal Emergency Response Committee, which will consist of Executive Officers and any other officials or individuals the Chief Executive deems necessary to meet the demands of the emergency or disaster;
- (b) Prepare and maintain a comprehensive emergency operation plan and to coordinate preparations of the emergency operations plan and programs by the political subdivisions of the Band; and

- (c) Institute training programs and public information programs and to take all necessary preparatory actions, including the mobilization of the Mille Lacs Tribal Police Department in advance of actual emergency or disaster.

Historical and Statutory Notes

Source:

Band Ordinance 27-20, § 3.

Cross References

Executive Branch, Powers and Duties of Chief Executive, *see* 4 MLBS § 6.

§ 4. Declaration of State of Emergency.

In event of an emergency or disaster, the Chief Executive is authorized to declare a state of emergency through the issuance of an executive order. Once the Chief Executive has declared a state of emergency and until termination of the state of emergency, the Chief Executive, or the Tribal Emergency Response Committee acting on behalf of the Chief Executive, may:

- (a) Provide resources and services necessary to avoid or minimize harm to health, life, and property;
- (b) Enter into agreements with the federal government and government of the State of Minnesota for the receipt of public assistance funds and coordinate such agreements between the political subdivisions of the Band;
- (c) Procure supplies and equipment;
- (d) Reallocate funds already appropriated to political subdivisions of the executive branch as reasonably necessary to meet the needs of the emergency or disaster; and
- (e) Prohibit any number of persons from assembling or gathering on or at any public place.

Historical and Statutory Notes

Source:

Band Ordinance 27-20, § 4.

Cross References

Civil Rights Code, Freedom of Religion, Speech and Press; Right to Assemble and Petition, *see* 1 MLBS § 1.

Executive Branch, Powers and Duties of Chief Executive, *see* 4 MLBS § 6.

Children and Families, Emergency Planning, *see* 8 MLBS § 960.

§ 5. Termination of State of Emergency.

Any state of emergency declared by the Chief Executive shall terminate if:

- (a) The Chief Executive issues an executive order terminating the emergency; or
- (b) The Band Assembly issues a resolution terminating the emergency.

Historical and Statutory Notes

Source:

Band Ordinance 27-20, § 5.

Cross References

Executive Branch, Powers and Duties of Chief Executive, *see* 4 MLBS § 6.

Legislative Branch, Legislative Power, *see* 3 MLBS § 2.

§ 6. Accountability and Reporting.

- (a) The Chief Executive will provide periodic updates to the Band Assembly regarding the status of an emergency or disaster as needed, requested, or available.
- (b) The Chief Executive and the Tribal Emergency Response Committee will provide the Band Assembly with the minutes of Tribal Emergency Response Committee meetings within one week after such meetings.
- (c) The Chief Executive will provide to the Band Assembly, at monthly intervals after such declaration, a report on the total expenditures incurred by the Band government during the preceding monthly interval which are directly attributable to the exercise of powers and authorities conferred by such declaration. Within one month after the termination of an emergency, the Chief Executive will provide a final report to the Band Assembly on all such expenditures.

Historical and Statutory Notes

Source:

Band Ordinance 27-20, § 6.

Cross References

Executive Branch, Powers and Duties of Chief Executive, *see* 4 MLBS § 6.

Legislative Branch, Legislative Power, *see* 3 MLBS § 2.

§ 7. Coronavirus Relief Funds.

- (a) The Commissioner of Finance is directed to report to the Band Assembly on expenditures incurred due to Coronavirus Disease 2019. Such reports will include, but not be limited to:
 - (1) the total amount of payments from the Coronavirus Relief Fund received from the United States Department of the Treasury;
 - (2) the amount of funds received that were expended or obligated for each project or activity;
 - (3) a detailed list of all projects or activities for which funds were expended or obligated, including the name of the project or activity; a description of the project or activity; and detailed information on any loans issued, contracts and grants awarded, transfers made to other government entities, and direct payments made by the Band that are greater than \$50,000.
- (b) Upon the Band Assembly's formal or informal acceptance of such reports, the Commissioner of Finance is authorized to submit such reports to the United States Department of the Treasury to certify that the contents of such reports are true, accurate, and complete. The Commissioner of Finance shall also submit a copy of the report to the Chief Executive.

Historical and Statutory Notes

Source:

Band Ordinance 60-20, § 1.