

POSTED  
9-7-99  
DTS

TRIBAL COURT  
OF THE  
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

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SHIRLEY OLDMAN,  
TRIBAL COUNCIL VICE-CHAIRPERSON,  
Plaintiff,

v.

Case No. C-015-0499  
ORDER AFTER HEARING

GEORGE ANTHONY, RITA SHANANAQUET,  
DOROTHY GASCO & ALICE YELLOWBANK,  
TRIBAL COUNCIL MEMBERS,  
Respondents.

AND

BARRY LAUGHLIN,  
TRIBAL COUNCIL SECRETARY,  
Plaintiff,

v.

Case No. C-016-0499  
ORDER AFTER HEARING

GEORGE ANTHONY, RITA SHANANAQUET,  
DOROTHY GASCO & ALICE YELLOWBANK,  
TRIBAL COUNCIL MEMBERS,  
Respondents.

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**OPINION**

**Matters Consolidated:**

This matter involves two (2) separate complaints filed by two (2) different individual Tribal Council members against the remaining Tribal Council members, excepting the Tribal Chairman. The separate complaints allege insufficient notice for calling a Tribal Council meeting.

Both *Complaints* are the same in their substance and the *Answers* filed by the Respondents to both *Complaints* are identical. At the commencement of the Hearings scheduled in these two (2) separate matters, the Court suggested to the parties that it would be more efficient for the parties and the Court to hear the two (2) separate matters together. The parties had an opportunity to object. They all consented after receiving assurances from the Court that nothing from the two (2) separate complaints or from the defenses would be lost in the process. Plaintiffs were given the opportunity to individually present their complaints to the Court, as were the Respondents given the opportunity to respond to the separate complaints.

**The Complaints:**

The complaints are based upon a meeting that was called by the four (4) Respondent Tribal Council members which the Plaintiffs contend did not comply with the five-day notice requirement of the *Interim* Tribal Constitution & By-Laws. Respondents contend that five days notice was given. They argue that no definition is given in the document itself and that Plaintiffs' interpretation of the Tribal Constitution & By-Laws is a personal one.

**Facts:**

Both Plaintiffs received fax notification after 10:30 P.M. on Thursday, March 25, 1999 of a Special Meeting of the Tribal Council called by the Respondents to be held at 10:00 A.M. on Monday, March 29<sup>th</sup>. Respondents contend that Thursday was Day-One, Friday was Day-Two, Saturday was Day-Three, Sunday was Day-Four and Monday was Day-Five. Plaintiffs argue that a day is a twenty-four hour period and that it is unfair to count Thursday as a day when they did

not receive notice until after 10:30 in the evening. The facts are not in controversy.

### **Relief Requested:**

Plaintiffs ask that the Court declare the March 29, 1999 meeting invalid, declare the action taken at the meeting void and order tribal reimbursement of all meeting stipends, mileage, per diem and lodging costs that may have been paid.

### **Opinion & Reasoning:**

The Court must begin by looking at the exact language of the Tribal Constitution & By-Laws which states the notice requirement. *“Special meetings may be called from time to time by the President or by a majority of the Board of Directors. Written notice of such meetings shall be given to all members of the Board of Directors at least five days in advance of such meetings.” Tribal By-Laws, Article 1, Section 2 (bold added for emphasis).* The parties correctly argue that the word “day” is not defined anywhere in tribal law.

The preferred definition of “day” by *Black’s Law Dictionary, Sixth Edition, West Publishing Co. (1990)* is the period of time consisting of twenty-four hours and including the solar day and the night. Additional definition is provided by various courts. “The period of time during which the earth makes one revolution on its axis.” *Long v City of Wichita Falls, 142 Tex. 202, 176 S.W.2d 936, 938, 939.* Less preferred definitions define day in terms of the time of sunlight from one night to the next.

The exact language of the *By-Laws* is critical to this Court’s decision in this matter. The use of the words “**at least**” in conjunction with the notice requirement means that a minimum

threshold must be met, i.e. the threshold is **mandated** by the *By-Laws*. It is clear that the minimum standard must be met or exceeded. **Mandates of minimum requirements contained in the Tribal Constitution must be strictly construed.** Otherwise, it would be very easy for the Tribal Council to find itself on a slippery slope of providing adequate or inadequate meeting notice because of the numerous pressing demands made to it as the governing body of the Tribe.

There is also a common sense aspect to the instant matter. The Court rejects Respondents' argument that the time between when the fax notice was received after 10:30 P.M. and midnight counts as one day. It is, at best, the last hour and one-half of a single date on the calendar. It is a "stretch" to conclude that such a short period of time be recognized as a day. One of the Respondents conceded such at the Hearing. It is indeed a stretch when trying to determine whether the minimum mandated notice has been provided. One of the Respondents argued that a friend was once jailed beginning about that time of the day and he/she received credit for one day served toward the sentence. Thus, that Respondent would have the Court think that counting such a small part of a day as an entire day is reasonable. The Court does recognize that the customary practice of jailers is to count any part of a calendar date in jail as a day. The Court also quickly points out the purpose of determining what constitutes a day is entirely different. For the jailer, it is a matter of budget and administrative convenience. For Court in the instant matter, it is to determine whether minimum standards have been met.

A day is widely-recognized as a twenty-four hour period of time. That is the definition that must be recognized in tribal law. It provides common sense meaning and does not "stretch" time to meet the minimum requirement mandated in the *Interim Tribal Constitution & By-Laws*.

**Recommendation:**

At the Hearing the Court asked both Plaintiffs and Respondents questions about various provisions of the Tribal Constitution & By-Laws in an attempt to focus the parties on the purpose of certain Constitutional mandates. What is the purpose of the various notice requirements for Tribal Council meetings? Are they for the benefit of those who serve on the Council, or are they required so that tribal members receive notice, be involved and informed of what their elected representative officials are doing? Why do the By-Laws allow for two (2) different kinds of meetings? Is the purpose of each kind of meeting the same or different? Do the different kinds of meetings have different notice, posting, publication, and agenda requirements? If so, why? What are they? What is the difference between publication and posting?

At this early point in the Tribe's development, it might be wise for the Tribe to develop a training program for Tribal Council members. An orientation program that Tribal Council members would take upon election to office could easily cover subjects including the questions posed above. After the orientation training the Tribal Council should have a training plan for each of its members. This recommendation should not be interpreted as the Court speaking negatively about the Tribal Council members involved in this matter. It is simple recognition that all of us continue to acquire knowledge, learn and develop skills. There are numerous training opportunities for tribal officials offered on a wide variety of topics throughout each calendar year. An annual appropriation for Tribal Council training and conferences would provide the resources. The more difficult challenge may be the full-time employment responsibilities of Tribal Council members who work outside of the Tribe. They simply must find the time and make the commitment to continue to learn and grow for the benefit of the entire community.

FOR ALL OF THE FOREGOING, this Honorable Court finds that the March 29, 1999 Special Meeting of the Tribal Council was not in conformity with the Tribal Constitution & By-Laws and rules in favor of the Plaintiffs in this matter.

**THIS HONORABLE COURT DECLARES ALL ACTION TAKEN AT THE MARCH 29, 1999 MEETING TO BE NULL AND VOID.**

FURTHERMORE, all meeting stipends, mileage, per diem and lodging costs that may have been paid to the Respondents for the March 29, 1999 meeting be reimbursed to the Tribe. This relief, which was requested by the Plaintiffs, is granted because it is clear from the proofs presented at the Hearing that Respondents had an ulterior motive in holding the meeting on that date because they knew that neither Plaintiff could not attend because of their full-time employment responsibilities. Respondents planned to remove Plaintiffs from a tribal gaming administrative board under the guise of having a membership mandate to do so. They apparently wanted the removal to be easy, so they conducted the meeting at a time when they knew that Plaintiffs could not be present. This Court has no opinion on the removal itself because it is not an issue in the instant matter, but recognizes that the ulterior motive fed the Respondents' interpretation of "day". Respondents interpreted the notice requirement to meet their desire to hold the Special Meeting on that date.

8/20/99

DATE

Honorable Michael D. Petoskey  
Chief Judge