

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
Tribal Court
Civil Division



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David M. Harrington, In Pro Per
Frank Bernard, In Pro Per
Dexter McNamara, In Pro Per
Petitioners,

Case No. C-240-0719

v.

LTBB Election Board,
Respondent,

David M. Harrington, **In Pro Per**
Frank Bernard, **In Pro Per**
Dexter McNamara, **In Pro Per**

Attorney for the Respondent
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**ORDER AFTER HEARING ON REQUEST OF INJUNCTION/TEMPORARY
RESTRAINING ORDER**

This matter was before the Court on a Petition on a Request for an Injunction/Temporary Restraining Order. Petitioners David Harrington, Frank Bernard, and Dexter McNamara ask the Court to enjoin the Oath of Office from being given by Tribal Court until such time as their four-year terms expire. A Hearing date was set for August 9, 2019, at which time the Petitioners and the Respondents appeared. The Petitioners are in pro per. The Respondent Election Board appeared, represented by Attorney Alvarado.

DISCUSSION

Petitioners' request is straightforward—a date certain has been set for the Oath of Office of incoming Elected Officials, that being Thursday, August 22, 2019. This date, say the Petitioners, deprives them of the four year term set forth in the Tribal Constitution Article VII (G).

The term of office shall be four (4) years except as provided in Article XII for the first election under this Constitution. The term shall extend from their oath of office until a successor is sworn in.

The Petitioners were given the Oath of Office before Council on October 8, 2015.

The Election Board state in general that they have followed and performed their duties and responsibilities as set forth in the Little Traverse Bay Bands of Odawa Indians (LTBB) Tribal Constitution and Tribal Statutes. See LTBB Constitution Article XII (ff) and LTBB WOS 3. 101. They

also feel that the Election Board should not be a party to this proceeding as they have performed their duties in accordance with the relevant Statute. They have certified the recent Election results after a challenge (see prior LTBB Tribal Court case C-239-0719), and, per the Board, have set the Oath of Office according to the statutory rules.

Article XII (G) Oath of Office

The Tribal Court shall administer the oath for the offices of Chairperson, Vice-chairperson and Tribal Council at the next regularly scheduled Tribal Council meeting at least thirty (30) days following the certification of election results.

--LTBB Constitution--

WOS Section 3.104 Oath of Office

*At the first regularly scheduled Tribal Council meeting, at least thirty (30) days following the Election Board's certification of the election results, the Tribal Court shall conduct the swearing in ceremony for the newly elected Officials. **Incoming elected Officials terms shall commence, and outgoing Council members' terms shall expire, upon such swearing in.** (Emphasis added) --LTBB Statute--*

What the Court must consider when requested to enjoin or stop an action from being taken or performed is the nature and substance of the action. Is such action or actions threatening the legal right(s) of another? And because of this, is restraint necessary?

Specifically, the LTBB Rules of Civil Procedure XI (f) as follows:

f. An injunction may be granted: (1) when it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists of restraining the commission or continuance of some act complained of, either for a limited period or perpetually; (2) when it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce irreparable injury to the party seeking injunctive relief; (3) when it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual; (4) in all other cases where an injunction would be proper in equity.

The parties before the Court were given the opportunity to show why or why not such relief should be granted.

FINDINGS AND CONCLUSION

Based on the reasons stated below the Court concludes that the relevant LTBB Statute 3.104 is controlling and the request for injunction/temporary restraining order is denied and the petition be dismissed.

The Court further finds that the Election Board is properly before the Court if only to respond to the Court's inquiry as to the manner in which the date of August 22, 2019 was set. (Although a notice of hearing was sent to legislative members other than the petitioners, their appearance was not mandated, and they did not officially participate.)

The Court relies on several Constitutional provisions and one significant Statutory provision in reaching a decision. The Court acknowledges the Petitioners reference to Article XII (G) as clear and unambiguous. The Court further recognizes that Constitutional provisions relating to the responsibilities of the Election Board are clearly set forth. Article XII (ff). The Court most importantly finds that the Election Board carried out their duties in a responsible and good faith manner, including, in conjunction with Tribal Council, setting the date for the Oath of Office.

In reaching a decision in this matter, the Court relies on the inherent power of the Tribal Council to make Tribal laws not inconsistent with the Tribal Constitution. Article VI (D)(1). Here in WOS 3.104, Tribal Council made a law governing their own members—that is, **“Incoming elected officials’ terms shall commence, and outgoing Council members’ terms shall expire, upon such swearing in.”** The Court must give deference to the Council enacting a specific Statute to govern their own terms. It cannot presume that Council was not aware at the time of the enactment that situations like this could arise. In fact, and in fairness, this situation could affect present and future Council members in the same manner, and the Court would be similarly disposed.

Therefore, the Court finds the Election Board carried out their duties in a responsible and good faith manner, including setting a date for the Oath of Office, in conjunction with the Tribal Council’s schedule. (The Court notes however that the use of the term “at least 30 days” in the Constitution and the Statute as a rather “inartful” directive.) Once the date was set, the Statute relating to commencement and expiration takes effect. And on taking the Oath of Office, outgoing Council members’ terms expire regardless of the exact length.

There was much discussion of the effect of a number of Constitutional provisions and a specific Statute using a mandatory word like “shall”. However, the Court focus is on the specific situation before it. Should there be any confusion, misunderstandings, or misinterpretations, it must be left to the legislative body or the Tribal Citizens to correct or amend, after thoughtful deliberation.

DECISION

Based on the above, the Request for an Injunction/Temporary Restraining Order is denied and the Petition is dismissed.

IT IS SO ORDERED.

8-12-19

Date



Hon. John J. Lemire, LTBB Associate Judge

CERTIFICATE OF SERVICE

I certify that on this date a copy of this ***Order Following Hearing on Request of Injunction/Temporary Restraining Order*** was served on the parties by First-Class Mail, and/or by LTBB Internal Mail.

8-12-19

Date



Tribal Court Officer