

TRIBAL CONSTITUTION

INTERPRETATION NO. 4-81

WHEREAS, the Office of the Field Solicitor of the Department of the Interior has issued an opinion, by a letter dated November 19, 1980, directed to Edwin L. Demery, Area Director of the Minneapolis Area Office of the Bureau of Indian Affairs; said letter being signed by Mariana R. Shulstad for the Field Solicitor, and said letter concludes:

"We thus conclude that, under the present provisions of the Minnesota Chippewa Tribe Revised Constitution and Bylaws, the TEC may not validly create a subordinate corporate entity such as they have attempted to do here. A constitution amendment would be necessary to give them such power. We hope this letter had adequately dealt with your questions on this matter. If you have further questions, or if we may assist you in any way, you may contact Ann M. Spencer of this office."

NOW, THEREFORE, the Tribal Executive Committee of the Minnesota Chippewa Tribe on its own motion does give the following opinion as to its authority as the governing body of the Minnesota Chippewa Tribe to create and recognize corporate entities.

There is no dispute that the Chippewa People existed in North America and what is now the United States long before Europeans arrived here. The Chippewa people were self-governing long before there was a United State of America or a State of Minnesota.

The European governments, and later the United States government, dealt with all of the Indian nations, tribes, and bands as sovereign peoples. The United States government has entered into a long series of treaties with the Chippewa Nation since the first treaty of 1785, 7 Stat. 16, 16 Stats. 719.

The principal of this relationship between Indian nations and tribes is set out in the **Handbook of Federal Law**, by John Cohen, wherein he states, at page 34:

"Generally speaking, the incidents attaching to a treaty with a foreign power have been held applicable to Indian treaties. Thus, in accordance with the general rule applicable to foreign treaties, the courts will not go behind a treaty which has been ratified to inquire whether or not an Indian tribe was properly represented by its head men, or determine whether a treaty has been procured by duress or fraud, and declare it inoperative for that reason. *United States v. New York Indians*, 173 U.S. 464 (1899); *United States v. Old Settlers*, 148 U.S. 427 (1893).

...the treaty, after executed and ratified by the proper authorities of the Government, becomes the supreme law of the land, and the courts can no more go behind it for the purpose of annulling its effect and operation than they can behind an Act of Congress. *Fellow v. Blacksmith*, 60 U.S. 366 (1856).

It is common knowledge among Indian people, including the Chippewa people, that the United States government in some cases negotiated treaties where valuable land was ceded for nominal sums from Indian people who did not have the authority to execute those treaties. The United States has said, through opinions of its Supreme Court, that the courts will not look to see if the head men negotiating the treaty properly represented the tribe.

It is the opinion of the Tribal Executive Committee that it is the only proper body to interpret the Constitution of the Minnesota Chippewa Tribe and that the United States, through its courts, solicitors, or employees, lacks the authority or jurisdiction to determine the meaning of the Constitution of the Minnesota Chippewa Tribe in opposition to the interpretations or actions of the Tribal Executive Committee.

It is the further opinion of the Tribal Executive Committee that it has both the inherent power and the authority, both implied and stated, under its Constitution to create and recognize corporate entities. No constitutional amendment is required to do so.

The Minnesota Chippewa Tribe has chartered corporations since the 1960s when it chartered the Housing Authorities. Since then, literally millions of dollars have changed hands based upon the authority of these corporations to do what they were chartered to do. Currently, many contracts and legal obligations on all of the six reservations are dependent upon the authority of these tribally chartered corporations to do business. Substantial rights would be affected and unnecessary litigation would proliferate if these corporations were held to have no authority nor to be validly in existence. Such a result is not necessary or desirable.

The Minnesota Chippewa Tribe finds the United States government and its Departments, such as the Department of the Interior, to be constantly in the position of supporting the authority of Indian leaders who executed treaties, either without authority or under duress or fraud whereby the vast estate and resources of the Chippewa people were depleted and, on the other hand, attempting to find tribal leadership without power or authority to perform necessary government functions and exercise authority needed to promote the welfare, maintain justice, and develop tribal resources for the members of the Minnesota Chippewa Tribe.

We do hereby certify that the foregoing Constitution Interpretation was duly presented and acted upon by a vote of 9 for, 0 against, at a regular meeting of the Minnesota Chippewa Tribal Executive Committee, a quorum present, held on January 27 & 28, 1981, at St. Paul, Minnesota.

Darrell Wadena, President
The Minnesota Chippewa Tribe

ATTEST: Alfred R. Pemberton, Acting Secretary
The Minnesota Chippewa Tribe