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MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel

DATE: ~~December 17, 2015~~ Updated February 26, 2016

SUBJECT: Petition – Cornelius – Oneida Seven Generations



You have requested a legal review regarding a petition submitted by Frank Cornelius. The petition contains a single paragraph. The Enrollment Department has verified a sufficient number of signatures on the petition. The petition contains the following request.

“In accordance with ARTICLE 111, Section 4 of the constitution, the below listed voters request a special General Tribal Council meeting meeting for FRANK CORNELIUS, to report on 7 Gens and present four (4) resolutions to be voted on by the General Tribal Council. 1. full forensic investigation on 7 Gens. 2. Have 7 Gens return the money back to the tribe. 3. Direct the Kaliwhisaks to print any article as freedom of the press. 4. Impose a “tax” on the BC for not dissolving 7 Gens.”

The petition was submitted without the referenced resolutions being attached. After discussion at the Oneida Business Committee meeting, the petitioner identified that no resolutions were in existence at the time of drafting the petition, obtaining signatures or filing the petition with the Tribal Secretary. A legal opinion was requested regarding the resolutions that were submitted after the petition. In summary, a petition is interpreted to have been reviewed by every person signing the petition, including all attachments. The signature is an indication that the member wishes to have the author present the information to the General Tribal Council. As a result, the resolutions, created and submitted after the petition, are not considered part of the petition. However, the resolutions are briefly analyzed in this opinion. *See “Opinion – Missing Pages in Petition – Cornelius Petition,” September 8, 2015, attached to this opinion.*

In addition to the above resolutions, the petitioner has also submitted a three page report to be included with his petition. As a part of the process the Tribal Secretary generally notifies a petitioner that he or she may submit a statement to be included in the mailing to the membership. I have included this three page report in this analysis. This legal opinion is subject to change if this report is withdrawn or amended.

To draft this opinion, I have reviewed prior actions of the General Tribal Council, Tribal law, policies and procedures, and various other resources. This opinion is broken into sections to address the issues raised in the resolution – dissolving Oneida Seven Generations Corporation, ACF Leasing, LLC litigation, conditional use permit litigation, lease revenues and Treasurer’s responsibilities, investigation of corporation, salary of corporate employees, assessing a tax on

the Oneida Business Committee, and Kaliwhisaks. In addition, there are separate sections regarding the four issues raised in the petition and in the resolutions which were not submitted with the petition – Kaliwhisaks, taxation, contracts and forensic audits.

Background

Dissolving Oneida Seven Generations Corporation

On December 15, 2013, the General Tribal Council adopted the following motion to dissolve the Oneida Seven Generations Corporation.

“Motion...to dissolve Seven Generations Corporation and for Frank Cornelius to assist and work with the Business Committee on the dissolution[.]”

The Oneida Business Committee immediately began addressing this directive of the General Tribal Council. There were several meetings, some were scheduled and some occurred as a result of an individual meeting between members of the Oneida Business Committee as well as the board members of the corporation. Frank Cornelius was invited to all formal meetings to discuss dissolution. However, he did leave the area during this process.

The Oneida Business Committee met on December 24, 2013, to address the dissolution of the corporation and to provide direction on how that will be carried out by adoption of resolution # BC-12-24-13-A. In Whereas #8, “the Oneida Business Committee, who is charged with carrying out the lawful actions of the General Tribal Council, present[ed] this resolution to begin the process of dissolution of the Oneida Seven Generations Corporation in a business-like manner[.]” The resolution began this process by narrowing the authority of the corporation, stabilizing the banking and business relationships to avoid loan defaults and partnership defaults, and finally to attempt to identify a business structure that would meet the commercial leasing needs of the Tribe. The goal was to complete the dissolution without resulting in financial penalties and create a strong commercial leasing entity.

The amendments to the corporate charter removed references to the board of directors and limited the actions of the corporation to commercial leasing. The goal of limiting the authority of the corporation was to begin the dissolution process and narrow the scope of the corporation’s activities during the dissolution process. The resolution also appointed an Agent, Sage Stone Management, LLC, whose sole purpose was to begin dissolution of the corporation.

As identified at the December 15, 2013, General Tribal Council meeting, dissolution of the corporation involved significant financial agreements and partnership agreements. The estimated time frame was 10-12 months. This involved, for example –

- negotiating with banks to pay outstanding loans, and how the remainder would be paid;
- identifying and transferring existing leases back to the Tribe;
- identifying the value of property owned by the corporation and allocating the value in accordance with the corporate charter; and
- negotiating in regards to corporation value and ownership in limited liability companies.

In addition to the above, the Oneida Business Committee requested the Agent to take two specific actions. The first action was to stabilize the corporate relationships. By this time, the Oneida Business Committee had been receiving information regarding corporate loans being

considered in default and partnership concerns about next steps after the dissolution of the corporation. These actions could have resulted in significant financial costs as identified in the report submitted by McGladrey & Pullen. Primarily, if the dissolution were conducted in a fiscally responsible manner the financial impact would be minimal.

The second action was to identify alternatives to manage the commercial properties of the Tribe. In addition to the Agent making recommendations, the Oneida Business Committee also reviewed the abilities of the Division of Land Management in regards to managing the commercial properties of the Tribe. The Oneida Business Committee has received a proposed draft of a corporate entity restricted to managing the commercial properties of the Tribe. The proposal identified that this type of a corporation could absorb the debt of Oneida Seven Generations, repay the loans issued by the Tribe, and estimated a regular dividend payment to the Tribe.

Between January 2014 and March 2014 the Oneida Seven Generations Corporation was not financially able to pay off all loans. In addition, negotiating amendments to the limited liability company partnerships was not able to be completed in order to avoid penalties associated with those business partners. Further, there were ongoing contracts and leases that it was not possible to finalize and conclude. Finally, transferring leases on Tribal fee land may have been able to be concluded, however leases on trust land were, and are, more difficult to finalize.

ACF Leasing Litigation – Contract Dispute

ACF Leasing, LLC and others brought suit in Illinois against Oneida Seven Generations Corporation, the Oneida Tribe of Indians of Wisconsin, and various other entities on March 16, 2014.¹ This litigation affected the ability of Oneida Seven Generations Corporation to transfer or dispose of assets, including dissolution. The Oneida Business Committee and the Agent for Oneida Seven Generations Corporation met to discuss litigation strategies and next steps.

A request for proposals from law firms with Indian law and business law expertise was made. After a review of the responsive firms and negotiation of a fee schedule the Oneida Business Committee and Oneida Seven Generations Corporation engaged the following law firms.

- Whyte, Hirschboeck, Dudeck, S.C. represents the Oneida Tribe of Indians of Wisconsin and Oneida Seven Generations Corporation.
 - Swanson, Martin, & Bell, LLP represents the Oneida Tribe of Indians of Wisconsin and Oneida Seven Generations Corporation as local counsel in the State of Illinois.
- Reinhart, Boerner, Van Deuren, S.C. represents Green Bay Renewable Energy.

In addition to the litigation, Whyte, Hirschboeck, Dudeck, S.C. was also brought on board to assist in the legal issues regarding the dissolution of the corporation. This included addressing the financing agreements, limited liability company agreements and leasing agreements. After the initial review by this firm, no further action has been taken by the firm as a result of the litigation being filed. Upon conclusion of the litigation or at a point when assets from Oneida Seven Generations Corporation can be transferred without liability of further litigation this firm may be requested to finalize the legal matters regarding the dissolution.

¹ The documents regarding this litigation have been placed on the Tribe's website.

Since the December 2013, action by the General Tribal Council and the Oneida Business Committee, the dissolution of Oneida Seven Generations Corporation was restricted by the litigation which limited the ability to close out the operations of the corporation. The Oneida Tribe of Indians of Wisconsin and Oneida Seven Generations Corporation have been dismissed from the case at the trial court level. ACF Leasing, LLC appealed this determination and the dismissal was upheld on appeal. No appeal of this decision by ACF Leasing, LLC was filed and the dismissal of the Oneida Tribe of Indians of Wisconsin and Oneida Seven Generations Corporation is final. However, ACF Leasing, LLC has a remaining complaint against Green Bay Renewable Energy and has received approval from the court to amend the complaint to include two additional corporate entities.

ACF Leasing, LLC has filed motions to dismiss its complaints against Green Bay Renewable Energy and other corporations. The court has accepted the motions and the case have been dismissed. As a part of the agreement to dismiss the case, ACF Leasing, LLC and Green Bay Renewable Energy have entered into a settlement agreement to settle all claims between the parties.

The dismissal of the case by ACF Leasing, LLC allows Oneida Seven Generations Corporation to begin the process of closing out some of the corporate entities owned by Oneida Seven Generations Corporation. However, as identified below, there remain some claims for damages in favor of the corporation which have not yet been settled or concluded through litigation. The Oneida Business Committee, as of the date of this opinion, was in the process of receiving recommendations from the Agent on the next steps regarding closing some of the corporate entities.

Green Bay Renewable Energy and Oneida Seven Generations Corporation – Conditional Use Permit

During this time period Green Bay Renewable Energy and Oneida Seven Generations Corporation were appealing the revocation of the conditional use permit by the City of Green Bay. The appellate court ruled in favor of the corporations and the City of Green Bay appealed. The Wisconsin Supreme Court upheld the appellate decision ruling that the City of Green Bay had not identified sufficient reasons for revoking the permit. At this time, Green Bay Renewable Energy and Oneida Seven Generations Corporation are pursuing a settlement with the City of Green Bay regarding the revocation of the conditional use permit. This is a potential recovery of lost profits or sunk costs.

Leasing Revenues

Oneida Seven Generations Corporation holds the master lease regarding several different properties owned by the Tribe. In some circumstances, the corporation has obtained loans to build office space or warehousing on those properties. In all circumstances, the corporation pays lease fees to the Division of Land Management for the use of those properties. None of the leases allow the land to be encumbered and a review of existing documents conducted earlier does not identify that this has occurred.

The master leases allow Oneida Seven Generations Corporation to sublease the properties to commercial tenants. Those tenants pay rent to the corporation which covers the cost of the

master lease fees, utilities, building maintenance, and in some circumstances build-to-suit construction costs.

Based on the 2015 Semi-Annual report submitted by the Treasurer, Oneida Seven Generations Corporation has \$17 million in assets, \$9 million in equity, and the Tribe has invested \$1.9 million since its creation in 1996.² This does not include lease payments made by the corporation to the Tribe regarding the master lease agreements and does not deduct lease payments made by the Tribe to the corporation for buildings such as – Ridgeview Plaza, Mason Street Plaza, Gaming Warehouse, or the Nori Damrow Food Distribution building. In some cases, the Tribe has developed a corporate partnership with Oneida Seven Generations Corporation, such as with the corporation Generations, LLC regarding the financing and construction of the Travel Center. In the event of profits realized at that site, the Tribe would realize a share of those profits while also paying rent for that portion of the building used by the Tribe.

Treasurer's Responsibilities

The Treasurer is delegated responsibilities in Article I, Section 4 of the By-Laws of the Oneida Tribe of Indians of Wisconsin, the job description approved by the General Tribal Council on July 30, 1990, and as a result of various directives of the General Tribal Council through the years.³ More recently, the General Tribal Council has adopted actions directing specific reporting requirements for activities such as travel by the Oneida Business Committee and submission of audits for tribal corporations.

² Note the \$1.9 million does not include loans to the corporation which must be repaid to the lender.

³ For example, the General Tribal Council has directed that the Treasurer (as well as individual members) should maintain the finances of the Tribe and financial information as confidential information.

July 9, 1983, General Tribal Council meeting, "Motion to support the confidentiality of the Treasurer's Report...motion carried."

July 6, 1993, General Tribal Council meeting, "Motion...that the Treasurer's Report be held in confidence by tribal members...motion carried."

A 1989 action by General Tribal Council adopting resolution # GTC-07-03-89-C regarding budgeting processes which contained the following directives; although this resolution has been modified by the adoption of processes and requests of the General Tribal Council, such as resolution # GTC-01-31-94-A and other more frequent actions.

1. That all tribal departments, including enterprises, shall be reviewed separately by the Oneida Business Committee in a special budget meeting called for that purpose;
2. That a mark-up session follow the special meeting;
3. That the budget, as approved, should contain special instructions by the Oneida Business Committee relative to philosophy, priorities, funding and spending limitations.
4. That a Special General Tribal Council meeting be called for September for the exclusive purpose of approval of the budget by the membership;
5. That any future approvals of budget during the fiscal year are limited to \$200,000.00 dollars and all others must be reviewed in public hearings and submitted to the General Tribal Council for approval.

On January 6, 1997, the General Tribal Council adopted the following motion.

Motion...to have a standardized format for the GTC Annual and Semi Annual reports by having each Tribal department separately submit a one to two page maximum report which includes the following: 1. Mission Statement, 2. Summary of major goals and objectives, ie. scheduled completion, revised completion, % complete, status/comment, 3. Staff, 4. Budget summary A. Personnel, B. Discretionary spending (training, travel, contracts, subcontracts, business & meeting expenses) C. Capital expenditures[.]

This motion was later repealed by resolution # GTC-07-07-03-B.

In November 2008, the General Tribal Council reviewed a resolution submitted with a petition regarding the Treasurer's responsibility and ultimately adopted resolution # GTC-11-15-08-C. This resolution directed reporting requirements by the Treasurer to the General Tribal Council. The July 14, 2008, legal opinion, "*Genskow Petition – Resolution – Treasurer Reporting to GTC*," identified that there are in excess of 580,000 transactions each year identified within the accounting systems of the Tribe. More recently, the Fiscal Year 2015 budget is made up of in excess of 1500 pages. The retail enterprises, excluding gaming likely have over 1 million transactions each year. Reporting on "every dollar" at "every GTC meeting" would result in 1000s of pages of activity.

The By-Laws of the Oneida Tribe of Indians of Wisconsin contains the following responsibilities delegated to the Treasurer in Article I, section 4.

"The Treasurer of the Tribal Council shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Council, whether they be tribal funds or special funds for which the Council is acting as trustee or custodian. He shall deposit all funds in such depository as the Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession and custody, at each regular meeting of the General Tribal Council, and at such other time as requested by the Council or the ~~executive~~ *business* committee."

This language requires the Treasurer to report on funds in his or her custody. How that report was made has changed over the course of the Tribe. For example, at the July 2, 1940 meeting the Treasurer's report identified that the Tribe had a cash balance of \$33.38, took in a little over \$47.00 in receipts and made approximately \$152 in expenditures. The minutes identify 10 different expenses. On the other hand, previous Treasurers have all reported on the overall financial status of the Tribe and presented an annual independent audit report.⁴

In addition to these reports, the Treasurer oversees the Tribe's accounting systems and personnel. These systems include documentation of every transaction or revenue and expenditures and ties into systems which maintain back-up documentation supporting these transactions. In addition, all revenues and expenditures are managed according to either Purchasing procedures, Accounting Department procedures, or business unit supporting procedures set forth in manuals and Standard Operating Procedures. All of these activities are maintained in accordance with accounting principles set forth by the Government Accounting Standards Board, federal regulations regarding accepted grants, and various other governing documents.

As identified above, in 1990, the General Tribal Council adopted resolution # GTC-11-15-08-C provides the most recent directives regarding Treasurer reporting requirements in Resolves #1 and 2.⁵

"...all Treasurer reports hereinafter include an independently audited annual statement that provides the status or conclusion of all the receipts and debits in possession of the Treasurer of the Tribe including, but not limited to, all corporations owned in full or in part by the Tribe[.]"

⁴ Previous Treasurers for which research identified reports in General Tribal Council materials include Kathy Hughes, Judy Cornelius, Mercie Danforth, Tina Danforth and recently Patricia King.

⁵ The minutes for this General Tribal Council meeting identified that the intent was not to require additional independent audits other than those already conducted.

“...all Treasurer’s reports to the Oneida General Tribal Council at the semi-annual and annual Oneida General Tribal Council meetings hereinafter include an independently audited financial statement that provides the status or conclusion of all receipts and debits in possession of the Treasurer of the Tribe and including, but not limited to component units (Tribally chartered corporations and autonomous entities, limited liability companies, state chartered corporations, any tribal economic development authority, boards, committees and commissions, vendors and consultants) owned in full or part by the Tribe[.]”

Since adoption of this resolution, the annual independent audits of the Tribe and its corporations have been presented to the General Tribal Council. An audit represents an opinion by the audit firm that the financial reports of the Tribe accurately reflect the finances of the Tribe and sufficient safeguards for these funds are in place. It does not reflect a review of every transaction and every procedure or process in place.

Requested Actions by Petitioner

The petitioner requests the General Tribal Council to consider four actions – Kaliwhisaks (free speech), taxation, contracts and a forensic audit. To support these actions, the petitioner later submitted four resolutions. Article VI of the Constitution of the Oneida Tribe of Indians of Wisconsin incorporates the individual protections set forth in the U.S. Constitution.

“...All members of the tribe may enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States.”

This section of the opinion will analyze the four requested actions separately within the protections identified in Article VI of the Tribe’s Constitution and the U.S. Constitution.

Kaliwhisaks

The petitioner requests the General Tribal Council to direct that every “article” submitted by a member be published and the “article” shall not be “edited.” To protect against liability, the petitioner directs the Kaliwhisaks to place a disclaimer regarding the “articles.” Although the proposed resolution is titled “Freedom of Speech, Press and Assembly” the petitioner is only requesting action regarding the press, i.e. the Tribal newspaper. This opinion will not address protected speech or assembly. The analysis regarding these concepts is unique to each and would span many pages of information that is not applicable to the requested action.

Finally, this opinion presumes that the request by the petitioner is to publish opinion letters, not newspaper articles. A newspaper publishing an article carries much greater liability which cannot be avoided by placement of a “disclaimer.” An article is reflective of the newspaper’s (including the editor’s and the reporter’s) presentation of statement of facts, However it should be noted that even clarifying that the “articles” are opinion letters or letters to the editor does not exempt the newspaper from liability.

Newspapers, editors, reporters and individuals who submit opinion letters are subject to various forms of liability – defamation, libel, and invasion of privacy, to name a few. The required elements of each type of lawsuit depend on whether the individual is a public or private figure. In addition, the Kaliwhisaks is posted on-line on the Tribe’s website which provides an additional

level of liability under a different set of rules and tests. This set of legal questions will not be included in this opinion.

The Kaliwhisaks publishes original articles written by reporters it employs, reprints articles it purchases from other news sources (such as Reuters and AP), editorials, letters to the editor and advertisements. The office maintains a manual of procedures and standards set forth for each type of publication which includes guidance regarding fact-checking and verifying accuracy. These can be found at the Kaliwhisak's offices.

The primary purpose of the Kaliwhisaks is to present the news regarding tribal activities and affecting Indian country. The newspaper is also the location all official publications of the Tribe are made. *For example, see Legislative Procedures Act, 16.8-2(c) and Oneida Judiciary Rules of Civil Procedures, 153.5-6(c).* Although the newspaper is subsidized by Tribal funding contribution, it supports its costs through selling advertising space. The newspaper also reserves space for opinion letters.

The policy for submission of opinion letters is included in the newspaper's operations manual. There is also a summary printed in the newspaper.

“Letters must be limited to 250 words. All letters are subject to editing and must have your signature, address and phone number for confirmation. Confirmation of letters will be needed before publication. Kaliwhisaks has the right to refuse publication of submitted letters.”

“Effective January 1, 2001 per Kaliwhisaks Policies & Procedures, Section I(c)(4), “individuals will not be allowed to publish more than eight (8) letters per year regardless of topics.”” *See page 8B of the December 3, 2015, Kaliwhisaks for example.*

Letters to the editor are published on a space available basis. The editor has identified the number of opinion letters received per edition of the newspaper averages from none to three letters. This amount generally increases during election periods. Editing of letters are generally to allow the letter to fit within the 250 word limit and to correct grammar. However, the editor has identified that letters have been edited to exclude information that could not be verified. Finally, some letters have been rejected in their entirety for the following reasons.

- Too much unverifiable information.
- Over the word limit.
- Potentially libelous information.
- Attacking individuals.
- Illegible.
- A personal ad more appropriate for the advertising section.

Taxation

The petitioner requires the General Tribal Council to impose a tax on Oneida Business Committee members for actions taken in regards to Oneida Seven Generations Corporation and the December 2013 General Tribal Council action. Specifically, a tax of \$5000 is placed on Oneida Business Committee members who voted “not to dissolve 7 Generations but only restructure” and a \$10,000 tax on the “Chairwoman and Tribal Attorney.”

In Blodgett v. Holden, 275 U.S. 142, 147 (1927), the U.S. Supreme Court struck down a tax retro-actively applied. The tax was a new gift tax applied to a period prior to the legislation's enactment date, and even prior to the proposed legislation being presented in Congress. The court stated, "...a statute purporting to lay a tax may be so arbitrary and capricious that its enforcement would amount to a deprivation of property without due process of law within the inhibitions of the Fifth Amendment." In Untermeyer v. Anderson, 276 U.S. 440, 445-6 (1928) that same gift tax was reviewed regarding the constitutionality of its application after the legislation was presented to Congress for consideration but prior to its being enacted into law. The court stated that, "[t]he taxpayer may justly demand to know when and how he comes to be liable for taxes – he cannot guess and ought not be required to guess the outcome of pending measures. The future of every bill before Congress is necessarily uncertain. The will of the lawmakers is not definitely expressed until final action thereon has been taken." The petitioner proposes to apply a tax to the action of the Oneida Business Committee taken over two years prior and for which no person could have had any notice that their actions could be subject to a tax.

In addition, to the taxation question, the proposed action by the petitioner also violates due process by finding the actions of the Oneida Business Committee to be in violation of the December 2013 General Tribal Council action without having the opportunity to provide any defense or response to the accusation. As identified in the eighth Whereas in resolution # BC-12-24-13-A, "the Oneida Business Committee, who is charged with carrying out the lawful actions of the General Tribal Council, presents this resolution to begin the process of dissolution of the Oneida Seven Generations Corporation in a business-like manner[.]" The third Resolve states, "...remain in office until such time as the dissolution of the corporation has been completed or amendments to the corporate charter are made[.]"

Contracts

The petitioner proposes that the General Tribal Council adopt a resolution calling for salaries of employees of Oneida Seven Generations Corporation to be modified going back to 2008, to be limited to no more than 25% of the profits of the corporation, and that salaries in excess of this amount be returned to the Tribe. This action violates the Tribe's Constitution regarding due process, is not consistent with the charter of the corporation, and is not consistent with the language in the original charter.

Oneida Seven Generations Corporation was created in 1996 by the Oneida Business Committee through adoption of resolution # BC-12-04-96-B. Under the authority delegated to the Oneida Business Committee to carry out the governance of the tribe, the corporation was created in accordance with Article IV, Section 1(h) of the Tribe's Constitution. The corporation has been in continuous existence since its creation and is currently directed by the December 2013 action of the General Tribal Council to be dissolved.

The original corporate charter contained the following language in Article IX.

(B) The Corporation shall remit to the Oneida Nation seventy-five percent (75%) of net profits after the establishment of a reserve for debt service and working capital needs. On an annual basis, the Corporation will submit to the Oneida Nation the projected need for working capital. The reserve for debt service will be set at an amount equal to six (6) monthly payments.

(C) Excess profits will then be paid over to the government of the Oneida Nation. No distribution of earnings or profit may be made to any individual by the Corporation.

In 2006, the Oneida Business Committee adopted resolution # BC-09-27-06-H. In the fourth Whereas, the Oneida Business Committee stated, "...it is in the best interests of the Tribe to amend the charter of the Oneida Seven Generations Corporation to promote and enhance the business and economic development of the Tribe[.]" Among other amendments, Article IX was amended as follows.

~~(B) The Corporation will remit to Oneida Nation seventy five percent (75%) of net profits after the establishment of a reserve for debt service and working capital needs. On an annual basis, the Corporation will submit to the Oneida Nation the projected need for working capital. The reserve for debt service will be set at an amount equal to six (6) monthly debt payments shall establish a cash reserve for debt service which will be set as an amount equal to six (6) months debt payments and one (1) year working capital. Debt payments are defined as payments on principal and interest for all current debts of the Corporation. Working capital is defined as current assets minus current liabilities.~~

~~(C) Excess profits will then be paid over to the government of the Oneida Nation. No distribution of earnings or profits may be made to any individual by the Corporation Distribution of earnings or profits may be made at the discretion of the Shareholders, which will be mutually agreed upon at the Annual Shareholder's Meeting.~~

Corporate employees are employed under an agreement or contract between the corporation and the individual. The proposed resolution suggests that the employee's salaries be negatively affected retro-actively back to 2008. The General Tribal Council does not have the authority to affect these contractual employer-employee relationships in this manner. The actions of the corporation were taken in accordance with the lawfully adopted charter and the delegated authority. To retro-actively change this employment contract would violate Article VI, "...all members of the tribe may enjoy, without hindrance...due process of law, as guaranteed by the Constitution of the United States." The federal Constitution prohibits the impairment of contracts in Article I, Section 10. This prohibition involves both public contracts, i.e. contracts with the state, as well as private contracts, i.e. contracts between individuals. The proposed resolution does not affect future employment relationships, it attempts to affect lawful employment contracts entered into and maintained for the past seven years.

In addition, as identified above and in prior opinions, the reference to the required percentage return to the Tribe was removed from the corporate charter in 2006. It is not clear why 2008 was chosen as the time period in which retro-active action is requested. As a result, the resolution attempts to implement language that was amended in 2006 and is no longer effective. At this time, the action that could be taken would be to amend the charter to reflect the original language in the 1996 charter and make that language effective after adoption.

Nothing in the employer-employee relations would be in violation of the corporate charter or the delegated authorities to Oneida Seven Generations Corporation.⁶ Further, nothing in the employer-employee relations is in violation of the original charter language. The 1996 language identified that the corporation will return 75% of the **net** profits less working capital and reserve

⁶ It should be noted that Oneida Seven Generations Corporation has one full time and one part time employee, not four as identified by the petitioner.

needs of the corporation. The revenues of the corporation minus operating expenses equal the net profit of the corporation. Employee salaries are an operating expense of the corporation.⁷ As a result, the resolution, even though it would be unconstitutional, would have no effect as employee salaries are an operational cost of the corporation and would be one of the expenses deducted prior to paying 75% of net profit to the Tribe.

Forensic Audit

The General Tribal Council has received four prior legal opinions regarding Oneida Seven Generations Corporation.

- September 23, 2013, *Cornelius – Petition – Dissolution of Oneida Seven Generations Corporation*
- March 12, 2013, *Dodge – Petition – Land Use – Oneida Seven Generations Corporation*
- February 15, 2011, *Genskow Petition – Resolution – Oneida Seven Generations Corporation*
- July 10, 2008, *Genskow Petition – Resolution – Oneida Seven Generations Corporation*

I have requested the Secretary's Office to place these prior opinions on-line on the Tribe's website in order to provide much of the background investigation requested by the petitioner in the resolution. Although these memos have been presented at prior meetings in which action was taken regarding the petitions and/or resolutions, members are encouraged to read these prior documents.

The petitioner requests that an "outside forensic federal audit or investigation" be conducted for "possible fraud in their land transactions or other financial improprieties." There is no specific allegation of fraud or impropriety. It is presumed that this is in relation to the land leased to the corporation which is developed and leased to commercial tenants. However, the Tribe utilizes both internal and external audits to determine that the appropriate measures are in place to track expenditures and receipts and to verify the accuracy of the financial statements.

A forensic audit looks at a specific activity in which fraud is alleged to have occurred. The Bureau of Indian Affairs does not currently have systems or personnel to provide such audit services, particularly when no federal funds are involved. Further, there is no specific allegation of fraud having occurred. As a result, it is not clear what is being investigated. The forensic audit requires specific skills and knowledge in order to conduct and there is generally a higher cost associated with this type of audit. The statement and proposed resolutions call for an "outside" audit, and identifying the scale or cost of such an audit if conducted by an independent auditing firm is not possible to calculate.

Analysis

The petition contains a request to call a General Tribal Council meeting to provide a report on the December 2013 directive of the General Tribal Council to dissolve the Oneida Seven Generations Corporation and to take action on four resolutions which were not attached to the petition. The petitioner has submitted a three page statement to the Tribal Secretary to be included with his petition. This is typical, allowing the author of a petition to submit a 'cover

⁷ See generally <http://www.investinganswers.com/financial-dictionary/financial-statement-analysis/net-profit-2230> for an explanation of net profit calculation.

letter' with a petition and to give a presentation at the meeting itself. The statement identifies several different issues raised by the author regarding the dissolution process. As identified in this opinion, there are inaccurate facts presented within the statement.

The statement erroneously identifies the Oneida Business Committee's intent in carrying out the General Tribal Council's December 2013 directive. There were individual requests to reconsider the December 2013 directive; however that is within the individual ability to do so. Even if that individual is the Chairman of the Oneida Business Committee. However, the Oneida Business Committee also took actions to begin the dissolution process.

The statement identifies that the attorney for the corporation was the same attorney working for Nature's Way. Research into the claim identifies no such attorney existed. This may be a reference to an individual who was appointed as a board member, but that individual was not hired as an attorney by the corporation or Nature's Way. There was no attorney engaged by the Oneida Seven Generations Corporation for the purposes of defending the corporation in regards to a General Tribal Council meeting or in regards to action that may have been taken as a result of a petition. The corporation has engaged legal counsel in regards to the litigation regarding the conditional use permit and ACF Leasing, LLC.

The dissolution of Oneida Seven Generations Corporation requires negotiation of the payment of bank loans and lines of credit. Such loans and lines of credit would either be paid in full through the corporation assets or as a result of either the Tribe or some other entity taking up the debt. In addition, the limited liability companies have rules for changing a member in the company in order to avoid penalties that may include purchasing the value of the assets and conclusion of the partnership. The statement identifies that the corporation could have been dissolved within 10 days. However, as identified above, it was not possible to conduct this within that time period and to avoid a negative financial impact. The materials for the December 2013, General Tribal Council meeting and the external accounting report both presumed that the dissolution would be conducted in such a manner as to avoid financial impact.

The proposed actions in the petition and the four late submitted resolutions are also problematic. The resolution regarding directing that all "articles" be published in the Kaliwhisaks results in increased liability to the Tribe which cannot be avoided by the placement of a disclaimer. However, the newspaper does provide an opportunity to publish letters to the editor, opinion letters, with minimal restrictions – i.e. 250 words or less, maximum eight times per year, and basic fact checking regarding the information in the letter. The resolution regarding taxation of the Oneida Business Committee and retro-active infringement on the employer-employee contracts within the Oneida Seven Generations Corporation are in violation of the protections in the Constitution of the Oneida Tribe of Indians of Wisconsin. Finally, the resolution regarding a forensic audit conducted by the Bureau of Indian Affairs is outside of the scope of that federal agencies activities and for which it does not appear funding exists. Further, it is not possible to identify what financial cost a forensic audit would rise to in light of the lack of allegations of fraud on the part of the corporation. As a result, it could be that every transaction of the corporation since its inception would have to be reviewed resulting in a fee far exceeding the value of any findings.

Conclusion

The petition requests an opportunity to present a report to the General Tribal Council and requests that body to take four actions. Four months after submission of the petition, the petitioner drafted and submitted the four referenced resolution. The petitioner has also submitted a statement to be included with the mailing to members for this meeting.

The petitioner's request to present a report to the General Tribal Council is in order. However, two of the proposed resolutions (taxation and retro-actively affecting contracts) would be in violation the Tribe's Constitution and are not in order for adoption by the General Tribal Council. The resolution regarding publishing "articles" in the Kaliwhisaks would subject the Tribe and the editor to undue liability which cannot be waived or avoided. It is recommended that the General Tribal Council, if anything, reaffirms the letters to the editor policy currently in place by the Kaliwhisaks as sufficient opportunity to present opinions to the members. Finally, the request for the Bureau of Indian Affairs to conduct a forensic audit is outside of that agencies activities and if conducted by an independent auditing firm engaged by the Tribe may result in costs that far outweigh any benefit obtained by the request for the audit given the lack of specificity of allegations and the almost 20 year life of the corporation. It is recommended that the General Tribal Council not direct such action be taken. If action is taken a two-thirds vote would be required to adopt the resolution since it will have an impact on the Tribe's budget and require funds to be identified for this purpose.

If you have further questions, please contact me.