

FILED JUL 29 1997

COURT OF THE SHAKOPEE MDEWAKANTON
SIOUX (DAKOTA) COMMUNITY

CARRIE L. SVENDAHL
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

Kimberly Amundsen, et al.)
)
 Plaintiffs,)
)
 vs.)
)
 The Shakopee Mdewakanton Sioux)
 (Dakota) Community Enrollment)
 Committee, et al.,)
)
 Defendants.)

File No. 049-94

MEMORANDUM AND ORDER

On July 15, 1997, the Court heard oral argument on the plaintiffs' motion to reopen, amend and enforce the Order entered in this matter on September 16, 1996. That September 16, 1996 Order granted the Defendants' motion for summary judgment in all respects but one: it denied the motion for summary judgment of the Enrollment Officer ("the Enrollment Officer") of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community"), and it directed the Enrollment Officer to process the plaintiffs' applications for membership in the Community, and to make recommendations to the Community's Enrollment Committee with respect to them, by October 16, 1996.

The Enrollment Officer complied with the September 16, 1996 Order: she made recommendations to the Enrollment Committee, as to

X0860.001

each of the plaintiffs' applications, within the specified time.

Thereafter, however, the process apparently stalled. The Enrollment Committee did not act, one way or another, upon the Enrollment Officer's recommendations for a considerable period of time. That inaction prompted the plaintiffs to move that the matter be reopened the September 16, 1996 Order be amended in a fashion that would direct the Enrollment Committee to process the membership applications¹.

Then, after the plaintiffs' motion was filed, but before it was heard, the Enrollment Committee met and decided that each of the twenty plaintiffs' applications be denied. Two grounds were stated, in the Enrollment Committee's decision: (1) each of the plaintiffs was enrolled in another Indian tribe, and had not relinquished that enrollment, and (2) none of the plaintiffs met the membership requirements specified by the Constitution of the Community.

On January 17, 1996, this Court held that the Community's Ordinance No. 6-08-93-001 ("the 1993 Enrollment Ordinance"), is the law which governs the processing of the plaintiffs' membership applications. That Ordinance mandates that the Enrollment Officer "shall" process enrollment applications within a thirty day time period; and that word--"shall"--formed the basis for the Court's

¹ The Plaintiffs also asked that the Court grant certain relief with respect to the General Council of the Community. The Court is uncertain what, if any, authority it might have been given to enter relief against that body; but clearly, in the context of this case, no such relief would be appropriate--even ignoring issues of ripeness--inasmuch as the General Council of the Community was never named by the plaintiffs as a party defendant.

conclusion, on September 16, 1996, that the Enrollment Officer had a duty to make a recommendation to the Enrollment Committee. The Court made it clear that it did not intend, in any way, to suggest what the Enrollment Officer's recommendation should be. Rather, the Enrollment Officer's duty was simply to make a timely recommendation.

On September 16, 1996, the Court also held that a February 13, 1996 resolution, adopted by the General Council of the Community, directing the Enrollment Officer not to process enrollment applications received from persons who are members of other Indian tribes, until those persons have relinquished their earlier tribal membership, should not apply retroactively to the plaintiffs' applications. The rationale for that aspect of the Court's decision was that the Enrollment Officer should have processed the plaintiffs' applications in 1994, when they first were received; and so the Enrollment Officer's duty, in 1996, was to give the plaintiffs the procedural treatment they should have received in 1994, before the February 13, 1996 resolution was in effect.

As has been noted, the Enrollment Officer complied with the Court's order. But the plaintiffs argued, during the July 15, 1997 hearing, that the Enrollment Officer was not alone in having an enforceable duty, under the 1993 Enrollment Ordinance. Section 6 of the 1993 Enrollment Ordinance says, in pertinent part, that the Enrollment Committee "shall approve or reject all enrollment applications based on the record presented and other evidence deemed acceptable by said Committee" (emphasis added). And during

X0860.001

the July 15, 1997 hearing, the Court indicated that it was sympathetic to the argument that the word "shall", in that section, implied that the Committee had an obligation to approve or reject an application within some finite time. The 1993 Enrollment Ordinance does not create an explicit time frame, as it does with respect to the Enrollment Officer's obligation to process applications; but it seems probable that the Committee is obliged to act within some reasonable time, considering all the circumstances.

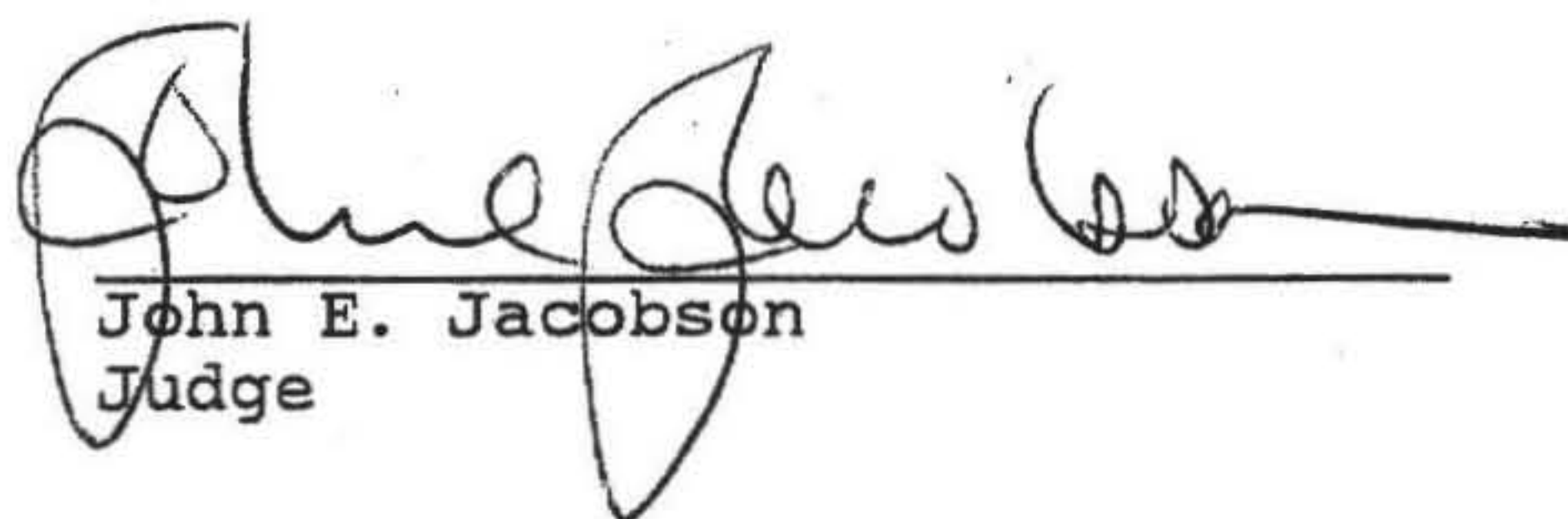
But the fact is that the Enrollment Committee now has acted upon the plaintiffs' applications; and in the Court's view, that action makes the plaintiffs' motion moot. The plaintiffs argued strenuously that the Committee had not acted until after they made their motion, and that this presented the Court with the possibility of a wrong which is susceptible of recurring, and which is without a remedy unless the Court granted their motion. But that argument leaves the question: what relief should be ordered? Should a timeframe be established for the processing of all other applications? Although the Court is concerned about the amount of time the processing of the plaintiffs' applications has taken, the Court is not convinced that the situation presently warrants that action; nor is it clear that the plaintiffs desire it. Rather, it seems that the plaintiffs wish the Court to insert itself into the merits of the consideration of their applications for membership, and that would be completely inappropriate, under the

X0860.001

circumstances².

The 1993 Enrollment Ordinance states that, whether the Enrollment Committee accepts or rejects an application for membership, an appeal lies, to be processed by the Business Council and ultimately presented to the General Council. At the conclusion of the July 15, 1997 hearing, the Court directed counsel for the defendants to advise the Court and plaintiffs' counsel, in writing, when the plaintiffs' appeals were received, and the likely timeframe for their processing. Between that date and this, counsel complied with that direction. Accordingly, and for the foregoing reasons, it is herewith ORDERED that the plaintiffs' motion is denied as being moot.

July 28, 1997



John E. Jacobson
Judge

² The Court is somewhat troubled by the fact that the Enrollment Committee chose to use "dual enrollment" as a reason for rejecting the plaintiffs' applications, given the Enrollment Officer's duty to ignore that factor. But whether or not the Court would have the authority to direct the Committee to reconsider its rejection--and the Court makes no decision on that point--those concerns, too, are mooted by the fact that there was an independent reason for the Committee's rejection, and also are mitigated by the fact that the plaintiffs have an appeal to the General Council.

X0860.001