

the Court at that time was significant, with respect to the operations the Community's government and its governmental officers and entities; but its boundaries did not extend far beyond those matters, and did not encompass such matters as breaches of fiduciary duty by corporate officers, civil damages for violations of the Indian Gaming Regulatory Act of 1988, damages from civil conspiracy, conversion, fraud, negligent misrepresentation, or breach of contract, which are the causes of action alleged in the Complaint in this case.

The pertinent part of Ordinance No. 02-13-88-01 reads as follows:

Jurisdiction. The Shakopee Mdewakanton Sioux Tribal Court shall have original and exclusive jurisdiction to hear and decide all controversies arising out of the Shakopee Mdewakanton Sioux Community Constitution, its By-laws, Ordinances, Resolutions, other actions of the General Council, Business Council or its Officers or the Committees of the Community pertaining to: 1 - membership; 2 - the eligibility of persons to vote in the proceedings of the Shakopee Mdewakanton Sioux Community or in Community elections; 3 - the procedures employed by the General Council, the Business Council, the Committees of the Community or the Officers of the Community in the performance of their duty. The Tribal Court shall also have jurisdiction to hear and decide all controversies arising out of actual or alleged violations of the Indian Civil Rights Act of 1968, 25 U.S.C. §1301 et seq.. The Tribal Court shall have the authority to formulate appropriate equitable and legal remedies to secure the protections of tribal law and the Indian Civil Rights Act for the Shakopee Mdewakanton Sioux Community and other Indians within its jurisdiction. The tribal Court shall have jurisdiction [sic] over all controversies which are justiciable at the date of enactment. All community members and persons enrolled in any federally recognized Indian Tribe who reside or may be present on the lands held in trust by the United States for the Shakopee Mdewakanton Sioux Community shall be subject to the jurisdiction of the Shakopee Mdewakanton Sioux Tribal Court. Decisions of the Tribal Court shall be final and shall not be subject to further review by the General

X0860.017

Council, or any other Tribal entity.

I indicated, in the telephone conference, my view that when the General Council of the Community utilized the words "pertaining to" in the foregoing section, and listed the sorts of matters over which it was giving the Court jurisdiction, its clear intent was to limit the scope of the authority which the General Council was giving to the Court. I do not believe that the General Council intended to render its listing meaningless, when it gave the Court broad authority to formulate remedies, and to deal with all cases which were justiciable at the time of enactment of the Ordinance.

Matters have not stood still, however. By adopting Resolution 11-14-95-003 ("the Jurisdictional Amendment"), the General Council expanded, very significantly, the scope of the Court's jurisdiction. There is language in the Jurisdictional Amendment to suggest that its effect merely was to clarify the scope of the jurisdiction which the Court has possessed since 1988; but in my view that is not a fair or accurate reading of history. The limitations of the General Council's delegations in 1988 were clearly stated, by the "pertaining to" language in Ordinance 02-13-88-01; and those limitations make it impossible for me to conclude that in 1988 the General Council intended that the Court would possess the broad authority described in the Jurisdictional Amendment.

But clearly the Court possesses that authority now. And the critical question, in my view, is whether the expansion of authority worked by the Jurisdictional Amendment can reach back to

X0860.017

provide the Court with subject matter jurisdiction now, in a matter over which we did not possess subject matter jurisdiction at the time the matter was filed.

Because this is a matter of such potential moment, during the telephone conference I requested that counsel for the parties provide me with their views on the matter, with the filing of two simultaneous briefs, limited to the authority of the General Council of the Community to retroactively provide the Court with subject matter jurisdiction. I also requested that the parties confer, and communicate with the Clerk of Court, with respect to the manner in which the deadlines for the filing of dispositive motions, and for exchange of witness lists and exhibit lists, can be moved to best accommodate the foregoing briefing; and I indicated that, if I conclude that this Court does have jurisdiction to proceed, the scheduled trial dates will not change.

Accordingly, it is herewith ORDERED:

1. The parties shall submit briefs, not later than June 21, 1996, on the question of whether the General Council of the Shakopee Mdewakanton Sioux (Dakota) Community can retroactively give this Court subject matter jurisdiction over a case, where the Court did not possess such jurisdiction at the time the case was filed.

2. The parties shall submit reply briefs, on the same question, not later than June 28, 1996.

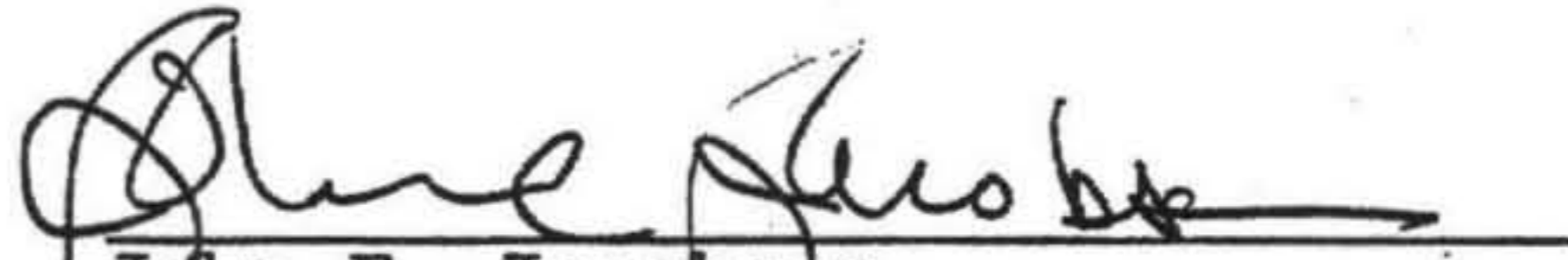
3. The page limits applicable to briefing on dispositive motions, under the Court's Rule 33(e) shall apply to the foregoing

X0860.017

briefs.

4. The Court will decide its subject matter jurisdiction; and if the issue is not moot, the Court will decide its personal jurisdiction over the Defendant Johnson, not later than July 1, 1996.

June 13, 1996


John E. Jacobson
Judge

X0860.017