

IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

FILED MAY 09 1997
CARRIE L. SVENDAHL
CLERK OF COURT
STATE OF MINNESOTA

COUNTY OF SCOTT

In Re Request for Advisory Opinion by
the Secretary-Treasurer

MEMORANDUM
& ORDER

On May 1, 1997, the Secretary-Treasurer of the Shakopee Mdewakanton Sioux (Dakota) Community filed a Request for Advisory Opinion with this Court. The Request sets forth two separate, but related questions involving the voting rights of Community members in a General Council meeting which proposes to amend the Community's Adoption Ordinance No. 11-30-93-002 ("the Adoption Ordinance"). The Memorandum filed in support of the Secretary-Treasurer's Request suggests that there are other items on the agenda for the Community meeting, but does not disclose what these other items are, and this Opinion should not be viewed as addressing any other business the Community may take up at the meeting. The meeting is scheduled to take place on May 13, 1997.

This Community took a courageous step in 1988 when it enacted Resolution Number 02-13-88-01 which created this Court. The intent of the Community, as expressed in the Resolution, was clear. The purpose of the Court is to resolve disputes arising from a broad range of actions, interactions of tribal government, tribal members and those who engage in relationships on the Reservation.

Today, the Secretary-Treasurer seeks the Advisory Opinion of this Court to two questions:

- (1) Could persons on the voters list for the Regular General Council meeting

scheduled for May 13, 1997, who are at least 18 years of age, who meet the residency requirement for voting, and who have become enrolled members of the Shakopee Mdewakanton Sioux (Dakota) Community by one of the methods sanctioned in In Re Election Ordinance No. 11-14-95-004, be prohibited from voting at the meeting on any matter, including whether to amend Adoption Ordinance No. 11-30-93-002, because the Department of the Interior has found them ineligible to participate in a Secretarial Election?

- (2) Could persons on the voters list for the Regular General Council meeting scheduled for May 13, 1997, who are at least 18 years of age, who meet the residency requirement for voting, and who have been adopted pursuant to Adoption Ordinance No. 11-30-93-002, which was approved by the Department of Interior on February 17, 1995, be prohibited from voting on any matter, including whether to amend Adoption Ordinance No. 11-30-93-002, because certain aspects of the approval of that ordinance have recently come under review by the Department of the Interior?

In the relatively short history of this Court, it has entertained only one other request for an Advisory Opinion. The Secretary-Treasurer argues that this Court has jurisdiction to provide an Advisory Opinion pursuant to Section II of Ordinance Number 02-13-88-01. With this we agree, however it must be noted that we do so with great reluctance because the procedure by which these opinions are provided is fraught with difficulty. There is no opportunity for presenting views whether they be in support or in opposition, and questions are presented in an abstract and hypothetical context.

This Court in Case No. 037-94 stated that "the Court's function is to hear cases and controversies -- that justiciability and the adversarial process alone produce the sort of complete record which permits good decisions." Id at 3. The Court also stated that a "governmental crisis of constitutional proportion may make advisory opinions appropriate." Id at 4. Here, the Secretary-Treasurer urges the Court to grant her Request "because the Business Council wishes to ensure a valid vote on the amendments to the Adoption Ordinance, and to avoid protracted litigation about whether the proper persons were allowed to vote on whether to amend the Adoption Ordinance. . . . for these are significant questions of tribal law, which only this Court can answer". Memorandum in Support of Request for Advisory Opinion at page 5. It is our view that avoiding protracted litigation is not a sufficient ground to grant this Request. Nor is it appropriate to grant the Request on the basis of ensuring a valid vote on the amendments to the Adoption Ordinance. It is unclear to this Court how any response to the questions presented will rise to a level of such assurance. This is best left to the adversarial process. Moreover, the fact that these questions pose significant questions of tribal law argues more toward holding our views until such time that a controversy arises for it is in that environment that significant questions of tribal law can be answered.

It is also our view that responses to these questions are unnecessary.

This Court, in its Advisory Opinion issued in Case Number 037-94, pointed out that the Community could not make payments under the Amended Business Proceeds Distribution Ordinance No. 12-29-88-002 to individuals who became members under the Community's Adoption Ordinance until and unless the Adoption Ordinance was approved by the Secretary of Interior as required by Article II, Section 2 of the Community's Constitution. Although, in this

instance, the question arises with respect to the right to vote instead of the receipt of payment under the Amended Business Proceeds Distribution Ordinance, the controlling fact seems to be that the Secretary has approved the Adoption Ordinance, and the individuals who have become members pursuant to the procedures set forth in that Ordinance are members who are entitled to vote at the General Council meeting if they meet the associated requirements (age, residency, etc...).


The Court in its decision in Smith, Feezor, et al. v. SMSC, Court File 038-94, went to great lengths to set out its view of the complex history surrounding the Community's practices involving membership. The issues presented -- centering around the meaning of Article II of the Community Constitution -- are similar to those raised by the Secretary's question. In its order the Court specifically dealt with motions for preliminary relief and the case was ultimately terminated prior to full adjudication. However, it is worthwhile noting that the Court strongly affirmed the sacred right of the Tribe to determine its own membership. The Court found, in its Dataphase analysis, that the tribal practice of "voting in" members, and the acquiescence of the Secretary of Interior in that practice, presents a likelihood of success on meeting Constitutional muster for those members voted in prior to 1994. In addition, the Court found that those members voted in subsequent to 1993, pursuant to the Community's Adoption Ordinance, may be barred from membership until and unless the Ordinance was approved by the Secretary. Here, it appears that the Interior Board of Indian Appeals has reversed the disapprovals of the Community's Adoption Ordinance, and the Area Director has approved the Community's Adoption Ordinance thereby giving rise to the full benefits of membership, including and especially the right to vote, for those individuals granted membership by the


Adoption Ordinance. (See Shakopee Mdewakanton Sioux Community v. Acting Minneapolis Area Director, Bureau of Indian Affairs, 27 I.B.I.A. 163 (February 8, 1995), Letter of Area Director to Shakopee Mdewakanton Sioux Community Approving Adoption Ordinance No. 11-30-93-02, dated February 17, 1995.).

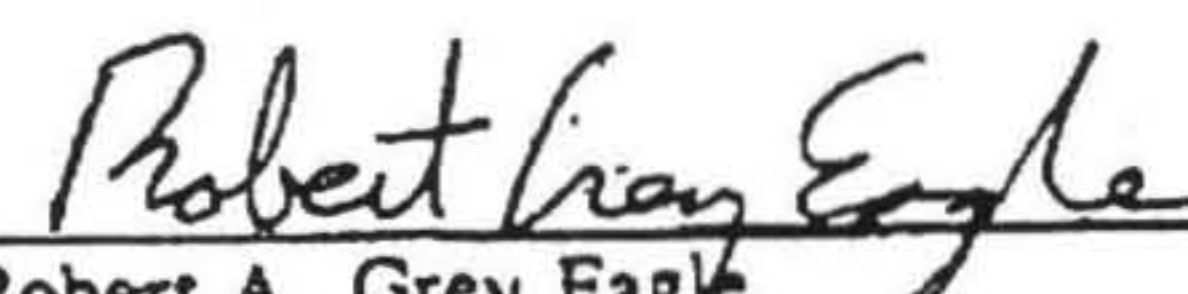
IT IS HEREBY ORDERED, that the Secretary's Request for Advisory Opinion is DENIED.

BY THE COURT,

Dated: May 9, 1997


John E. Jacobson,
Tribal Court Judge


Henry M. Buffalo, Jr.,
Tribal Court Judge


Robert A. Grey Eagle,
Tribal Court Judge