

TRIBAL COURT
NOTTAWASEPPI HURON BAND OF POTAWATOMI

JOSEPH R. CAPITANO,

Plaintiff,

Case No. 07-002-CV

v.

*Decision on Defendant's
Motion to Dismiss*

TRIBAL COUNCIL
of the Nottawaseppi Huron
Band of Potawatomi,

Defendant.

DECISION ON DEFENDANT'S MOTION TO DISMISS

I. Introduction:

This matter comes to this Court on Tribal Member Plaintiff's *Complaint* against the Tribal Council of the Nottawaseppi Huron Band of Potawatomi. Plaintiff complains that the Tribal Council does not have the authority to elect its own officers, and that by doing so it deprives tribal members of their right to elect the officers of the Tribal Council. The Tribal Council answers that the Tribal Constitution provides no basis for Plaintiff's complaint and in response has filed a motion to dismiss this present action.

II. Jurisdiction:

This Court clearly has jurisdiction to hear and decide the instant matter. The People of the Band have established courts of general jurisdiction. See *Tribal*

Constitution of the Nottawaseppi Huron Band of Potawatomi, Article X, Section 1. The instant matter involves an issue regarding interpretation of the Tribal Constitution. This dispute is solely an internal tribal matter that must be resolved by the courts established by the People for such purpose. See *Tribal Constitution*, Article X, Section 3(b)(1).

III. Statement of the Facts:

Both parties agree that there are no facts at issue in this matter and have asked this Court to make a ruling based upon the law.

IV. Issue Presented:

Whether Tribal Council has the constitutional authority to elect its own officers?

V. Discussion:

The Tribal Constitution is the embodiment of Tribal Members' collective will as to their common governance. As such, it is universal consent to that common governance and it delegates power from those governed to their government. See *Tribal Constitution, Preamble*. The document itself is comprised of the exact expressions of the People in written form. It is the organic governing document of the Band and its supreme law.

The Tribal Constitution is completely silent as to the election of the Executive Officers of the Tribal Council, except for that of the Chairperson in a single passing reference. It simply states that "*The Tribal Council is and shall be composed of five (5) tribal members elected at large ...*" See *Tribal Constitution*, Article IV, Section 1. Thus, it is clear beyond any doubt that Tribal Members have not expressly reserved this right for themselves. In fact, it is suspected by this Court that such was a conscious

decision based upon the common sense consideration that, with the results of an election being unknown until it is conducted and the makeup of any particular Tribal Council only then becoming apparent, the best possible government requires those best suited for particular executive office positions be known and positioned to assume the responsibilities of those particular offices. Each office requires certain skills, competence and commitment; and each office varies in these requirements. How can anyone know who is best suited and willing to take on the particular duties of each office, until the pool of Tribal Council members is established? The method of Tribal Council members themselves electing their Executive Officers has the advantage of ensuring that qualifications and willingness to serve in the various Executive Offices are considered once the Tribal Council members have been elected.

The remaining consideration for this Court is whether the Tribal Council itself has the authority to elect its own Executive Officers. The Tribal Constitution contains a **broad delegation of power** to the Tribal Council, which is "*Subject to the express restriction upon such powers in this Constitution...*" See Tribal Constitution, Article VI, Section 1. There is no express restriction in the Tribal Constitution on the power of Tribal Council to elect its own Executive Officers. Additionally, the Tribal Constitution authorizes the Tribal Council "*To adopt resolutions or ordinances to effectuate any of the foregoing powers or those powers set forth in this Constitution.*" See Tribal Constitution, Article VI, Section 1(o). Clearly, this express delegation of power from the People is sufficient to provide unquestioned authority to organize the internal structure of the Tribal Council and authority for Tribal Council to provide procedures sufficient to carry out its constitutional responsibilities.

VI. Conclusion:

The Tribal Council has the constitutional authority to elect its own Executive Officers. Such election does not infringe upon any reserved rights of the people. In fact, such election provides a common sense form of government.

VII. Order:

FOR ALL OF THE FOREGOING, THIS COURT GRANTS DEFENDANT'S *MOTION TO DISMISS* AND HEREBY DISMISSES THIS MATTER.

12/10/07

DATED



MICHAEL PETOSKEY
CHIEF JUDGE