

In My Opinion ...

by Jessie Davis

As vice chairman, I've always tried to be neutral in articles. However, since I've received numerous phone calls and talked in person to several tribal members, I believe the membership needs to know why the Tribal Council was split in our support of whether a tribal employee could serve on council at the same time.

This is a very controversial issue and although Bud Lane is the person who challenged our laws, it is not personal to just Bud. I believe we have several hard-working, dedicated employees who if they decided to run for council, would do an excellent job if they were elected. However, I would hope they themselves would see the conflict it presents.

For more than 20 years, the Siletz Tribe has had a policy and ordinances prohibiting tribal employees from serving on Tribal Council at the same time.

As the chairman explains in her report, this policy was challenged in Tribal Court by Bud Lane, a tribal employee who was recently elected to the council. Bud argued that denying his right to keep his tribal job while serving on council was a violation of his civil and constitutional rights.

On March 6, Judge Calvin Gantenbein ruled in Bud's favor, declaring that the policy and ordinances in support of that policy were unlawful and unconstitutional. As Chairman Pigsley further explains, the council requested the Secretary of the Interior on Feb. 9 to conduct a constitutional election so the general membership can vote on this issue. The Bureau of Indian Affairs (BIA), which will conduct this election, has 180 days to do so. The Siletz Tribal members' vote will be the final decision on this issue.

Historical Background

After the Siletz Tribe was restored in 1977, it adopted the Tribal Constitution in 1979. In the summer of 1982, the council, recognizing the need to keep government separate from administration, had the wisdom to adopt the prohibition in two documents: the tribe's Election Ordinance and the Personnel Policies.

Tribal Councils that followed adopted the prohibition in two other tribal documents: the tribe's Ethics Ordinance and the Annual Plan of Operations Manual.

All of these documents were subjected to legal review. The minutes of the February 1982 council meeting reveal that Dolly Fisher, Tribal Council, asked the tribal attorney, Bruce Bishop, "whether they needed to change the Constitution because they had just adopted an employee could not serve on council at the same time." He assured everyone that, "This just confirms what the Constitution says." Numerous revisions have been made, but each time, the policies were left in place.

Listed below are several concerns for not allowing tribal members to be an employee and a council member at the same time.

Concerns/Issues

1. First and foremost, it violates a basic principle – keeping executive functions separate from administrative functions.

The Tribal Council as the governing body of the tribe sets policies, while tribal administration, under the general manager, is responsible for implementing policies. Allowing tribal employees to be on council muddles up those roles, a condition ripe for favoritism, conflicts of interest, and abuse.

2. Tribal administrators of other tribes that have allowed employees to be on council cite numerous cases of council member/tribal employees who leave their jobs unattended and unfinished while they take off for council meetings and conferences. What can supervisors do when a Tribal Council member says he/she has important council work to do? Not much, according to administrators of other tribes.

3. There could be serious problems if certain key tribal employees run for and are elected to council, i.e., the chief financial officer of the tribe, the general manager or deputy general manager of Chinook Winds, the tribal staff attorney, the executive director of the gaming

regulatory agency or an agent of the agency, or other key employees of the tribe.

If elected, these employees could not be denied council seats. We cannot pick and choose who can and cannot be on council. Allowing such tribal employees to be on council would be fertile ground for abuse of power, conflicts of interest, and diminishment of internal administrative checks and balances.

4. A special class of tribal employees would be created who could afford to be on council because of their employment income while at the same time other young, educated, capable tribal members who **are not** employed by the tribe would be barred because they couldn't afford to be on council. Allowing tribal employees to be on council solves nothing; it only compounds the problem.

5. It will establish two classes of council members – those who are paid council salary with **no fringe benefits** while other council/employee members who work for the tribe will continue to be paid their **full salaries as well as full fringe benefits**.

Judge's Decision

Several other points need to be made regarding the hearing and the judge's decision. I have been asked by several tribal members to explain why the tribal attorney did not defend the laws of the tribe.

- Tribal attorney Craig Dorsay was not authorized to represent the tribe's position until Thursday morning, which is why he did not prepare a brief in defense of the tribe's policy. The tribal position reflected in the tribal ordinances was therefore not adequately represented during the hearing.
- The judge held very little regard for the commitment of council members' time on tribal business. A detailed account of the time each council member spent on council business in 2003 shows that the

majority of council members work virtually full time.

According to the tribe's Personnel Manual, tribal employees are required to work 40 hours a week. Allowing council members to be tribal employees could result in council meetings without a quorum, with no timely council action taken on vital tribal issues. Also, it's important not only to be present when council votes, but also to be actively involved in discussions and knowledgeable about issues before action is taken.

We regret the judge failed to see how impossible it would be for an individual to fulfill both positions and failed to see the potential negative impact on Tribal Council operations. Being an employee is a full-time commitment. Tribal Council also requires a full-time commitment.

- By stating, "Several of the past and present Tribal Council members have worked full time for non-tribal employers," the judge told only half the story. Two of those council members were managers who had worked for their agencies for many years and had accumulated many hours of comp time, which gave them the flexibility to devote considerable time to tribal business. Plus, the majority of the meetings were held in the evenings and on weekends.

Furthermore, since their retirement, the amount of council work has multiplied and is now virtually full time. In contrast, time was when it was possible to meet occasionally and on weekends and evenings. No longer. The judge's statement is therefore a gross oversimplification of the facts.

Those tribes that allow an employee to be on council at the same time feel they have created a political hot potato. Currently, there is a 4-4 vote on the Tribal Council as to whether our tribe should allow our policies to be changed.

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