

In the Tribal Court of the Confederated Tribes of Siletz Indians of Oregon

In the matter of: Alfred Lane III, Petitioner, v. The Confederated Tribes of Siletz Tribal Council, Respondent
Case No. TC04-02

Findings of Fact, Opinion, and Judgment

This matter came before the Court for hearing on March 6, 2004, before Chief Judge Calvin Gantenbein. Petitioner, Bud Lane, represented himself, and the Respondents were represented by attorney, Craig Dorsay. These Findings of Fact, Conclusions of Law, and Judgment are entered pursuant to § 3.46 of the Siletz Tribal Court Rules of Procedure.

Witnesses

The Court heard testimony from the following witnesses: Edmond Ben, Mary Fisher, Elouise Case, Douglas Brown, Lillie Butler, Reggie Butler, Jessie Davis, Jane John, Dave Hatch, Rosemary Landis, and Delores Pigsley.

Plaintiff's Exhibits

1. U.S. Supreme Court Case and Cover Letter
2. Affidavit of Frank Simmons
3. Affidavit of Phil Rilatos and Letter
4. Employee Evaluation for Alfred Lane
5. Certification of Election
6. Resolution #14
7. Resolution #15
8. Resolution #18
9. Resolution #19
10. Resolution #22
11. Minutes of Tribal Council Meeting of 01/16/04

Respondent's Exhibits

1. U.S. Code Collection
2. *Minielly v State of Oregon et al*
3. *Briggs v Merit Systems Protection Board*
4. *Merle v U.S.*
5. Historical Tribal Council Documents
6. Document signed by Edmond Ben
7. Florence Griggs Questionnaire
8. Meeting Minutes of 03/29/82

Relevant Laws

Siletz Tribal Constitution

Article II – Rights of Members

Section 1. Individual Rights

Each duly enrolled member of the Confederated Tribes of Siletz

Indians of Oregon shall have the following rights:

The right to equal opportunity to participate in the economic resources and activities of the Confederated Tribes of Siletz Indians of Oregon.

Article IV – Branches of Government

Section 1. Councils

The Tribal Council is empowered to exercise all legislative authority except that vested in the General Council.

Article VI – Elections

Section 3. Tribal Council Election

Candidates for Tribal Council must be duly enrolled members of the confederated Tribes of Siletz Indians of Oregon who will be at least eighteen (18) years of age on the date of election and who have never been expelled in accordance with Article VII, Section 4.

Indian Civil Rights Act

In 1968, The Indian Civil Rights Act was passed under 25 U.S.C. §1302. The relevant section of this Act is:

No Indian tribe in exercising powers of self-government shall –

- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech ...

Tribal Ordinances and Policies

The Tribal Council Ethics Ordinance, Section 3.006, (d) states that a tribal employee who has been elected to the Tribal Council “shall be deemed to automatically terminate his/her employment with Tribal government ...”

The Personnel Manual of the Siletz Tribe, Section I.604.9 states that a tribal employee who has been elected to the Tribal Council “shall be deemed to automatically terminate his/her employment with Tribal government ...”

The Annual Plan of Operations Manual of the Tribe, Section 416.11

states that a tribal employee who has been elected to the Tribal Council “must automatically terminate his/her employment with the Tribal government ...”

The Tribal Election Ordinance, Section 2.49 states, “A tribal employee who is elected to the Tribal Council will cease working for tribal government automatically upon taking office.”

Procedural and Legal History

On March 29, 1982, the Tribal Council enacted a new section to the Election Ordinance, which stated, “No tribal member shall serve simultaneously as a member of the Tribal Council and as a tribal employee. A tribal employee who is elected to the Tribal Council will cease working for tribal government automatically.”

This prohibition against being an employee of the tribe and being an elected Tribal Council member has been perpetuated and is currently found throughout the Siletz Tribal ordinances and manuals.

Alfred Lane is an enrolled member and is employed by the Confederated Tribes of Siletz Indians in the Culture Department as a Traditional Arts and Language instructor. On February 7, 2004, Mr. Lane was elected to the Tribal Council and immediately filed for a Temporary Restraining Order to prevent the tribe from terminating his employment pending the outcome of this case.

Issues

- 1) Are the ordinances and policies adopted by the Tribal Council requiring an employee to terminate his employment upon being elected, constitutional?
- 2) Did the Tribal Council have the authority under the Constitution to set an additional qualification/restriction upon being elected to the Tribal Council?

Findings of Fact

The facts of this case are not in dispute. When the tribe was restored

and the authors were drafting the Constitution, they considered the issue of employees being elected officials. However, they did not propose or adopt any prohibition when the General Council adopted the Constitution on June 13, 1979.

The prohibition was first discussed by the Tribal Council on March 16, 1982, and formally adopted on March 29, 1982, in the Election Ordinance. This general restriction has continued without interruption or challenge since, and has been embraced in other ordinances and resolutions.

Prior to trial on these issues, Mr. Lane went before the Tribal Council and requested that these ordinances, resolutions, and policies be rescinded. The Tribal Council in split votes denied his request. The vote was 5 to 4 in favor of rescission of the prohibitions; however, a 2/3 majority was required for passage.

On February 9, 2004, the Tribal Council passed Resolution 2004-032 in which the secretary of interior was requested to hold a general election to amend the Constitution to “prohibit elected or appointed Tribal Council members from being an employee of the tribe.” This general election will take place some time in the future.

Mr. Lane argues that to require him to lose his tribal job in order to be an elected Tribal Council member is a violation of the Constitution. He further argues that the tribe has ethics codes and ordinances, which would eliminate any of the conflict considerations that the prohibitions were intended to cure.

The tribe argued that the Tribal Council had the authority to enact the laws. They feel that the longevity of the prohibitions attests to their validity. They further argue that the laws were made to prevent conflicts of interest and that there would be inherent friction by an employee also being on the council. Lastly, they argue that the

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