

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

File No. 24-010-GC
Honorable Caroline LaPorte

Ogema Larry B. Romanelli, in his official capacity,
Plaintiff.

V.

LRBOI Tribal Council,
Speaker, Tammy Burmeister, Recorder, Pam Johnson,
Councilors, Gary DiPiazza, Shirley Wever, Misty Silvas,
Shannon Crampton, Julie Wolfe, Ron Wittenberg, and
Al Metzger.

Defendants.

**ORDER ON VERIFIED COMPLAINT FOR AN EX-PARTE ORDER FOR A WRIT OF
MANDAMUS**

On January 11, 2024 at 4:29 P.M. the Court received a verified complaint for an Ex-Parte Order for a Writ of Mandamus which was filed by Larry Romanelli in his official capacity for the Little River Band of Ottawa Indians as the Ogema against Defendant Tribal council.

The Court has jurisdiction over this matter pursuant to Article VI Section 8 (f).

The verified complaint states the following:

1. Plaintiff is an enrolled member of the Little River Band of Ottawa Indians and the elected Ogema of the Tribe.
2. LRBOI is a sovereign Indian nation, recognized by federal law, and governed by the Tribe's constitution and laws.
3. Article V, §5(a)(5) gives the Ogema the sole power to "timely prepare and present the Annual Tribal Budget to Tribal Council for Approval and other action and to keep the Tribal Council fully advised as to the financial condition and needs of the Tribe, preparing monthly reports for the Council, and making quarterly reports available to membership.
4. On or about August 28, 2023, the Ogema presented the 2024 Annual Tribal Budget to the Tribal Council.
5. On or about November 29, 2023, the Tribal Council submitted a proposed budget with amendments to the Ogema for approval.

6. On or about December 1, 2023 the Ogema vetoed the proposed budget amendments pursuant to Article V, §6 of the LRBOI Constitution.
7. On or about December 13, 2023 the Tribal Council failed to override the Ogema's veto.
8. On or about December 13, 2023, the Ogema approved, signed and filed his 2024 Annual Budget without amendments.
9. Section 5.13 (e) of the Budget and Appropriations Act of 2013 required by the Tribal Council to return the tribal budget without amendments to the Ogema for approval and signature.
10. The Ogema's 2024 Tribal Budget was signed and approved before December 31, 2023.
11. The Tribal Council has failed and refused to make appropriations for the first quarter of 2024.
12. If an ex-parte order is entered by the Court the public will not be harmed, since the order requested will enable the tribal government to operate and provide services to members.
13. By refusing to appropriate funding for the operation of the tribal government in a manner consistent with the 2024 Budget, the Tribal Council has failed in its duty to fund the tribal government.
14. The operation of the tribal government is essential to the provision of government services for tribal membership, and the failure to appropriate funds for those services places the tribal membership and the staff of the Tribe in so immediate, as no budgetary appropriations for the operation of the tribal government and government services have been made for the first quarter of 2024.
15. The harm to the Tribal membership outweighs the harm to the defendant if the Court grants an ex-parte order.
16. The harm to the Tribal membership outweighs the harm to the defendant if the Court grants an ex-parte order.
17. Without such appropriations government operations must cease, and all services to members and to members and to Tribal Elders, including health care, must cease.
18. Tribal members, especially Tribal Elders will face irreparable injury from lack of services and care without an ex-parte order.
19. The Plaintiff has demonstrated in these pleadings that he is likely to prevail on the merits.
20. Councilors Shannon Crampton, Julie Wolfe, Ron Wittenberg, and Al Metzger have persistently acted in bad faith in furtherance of a political agenda to unlawfully obstruct the appropriation of budgeted funds for the operation of the tribal government.¹

The Plaintiff requests the Court in their verified complaint that the Court enter an ex-parte order for a Writ of Mandamus directing the Tribal Council to make appropriations of funds for government operations in a manner consistent with the 2024 Annual Budget approved and signed by the Ogema on or about December 13, 2023, and to enter an Order declaring that the annual budget approved and signed by the Ogema on or about December 13, 2023 is the final annual Tribal Budget for 2024.

The motion complies with the rules surrounding ex-parte relief. For the Court to issue an ex-parte order (meaning without notice to the other party), it must be satisfied by specific facts set forth in an affidavit or verified pleading that irreparable injury, loss, or damage will result from the delay required to effect notice, or that notice itself will precipitate adverse action before an

¹ See Verified Complaint filed January 11, 2024 at 4:29 P.M. EST pgs 1-4.

order can be issued by this Court. The motion is verified, so the Court turns next to whether or not it is satisfied by the specific facts set forth in the verified pleadings. The Court is satisfied that the specific facts set forth in the verified pleading show that irreparable injury, loss, or damage will result from the delay required to effect notice. Numbered provisions 14, 17, and 18 of the verified complaint make it clear that irreparable injury, loss or damage will result from the delay required to effect notice. In fact, that harm is presently occurring.

A writ of mandamus is an extraordinary remedy and will only be issued where (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result. *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273, 284 (2008).

First, the Court finds that the Ogema has a clear legal right to performance of the specific duty sought because on December 13, 2024, Tribal Council failed to override the veto pursuant to both the Little River Band of Ottawa Indians Tribal Constitution Article V § 5 (c), failed to comply with Section 5.13(e) by failing to return the budget to the Ogema without the amendments from Tribal Council, and because Tribal Council failed to appropriate funds in accordance with Section 5.07 of the Budget and Appropriations Act (2013). Section 5.13 (e) of the Budget and Appropriations Act of 2013. As such, the Court finds that the annual budget approved and signed by the Ogema on or about December 13, 2023 is the final annual Tribal Budget for 2024.

Second, the Court finds Tribal Council has a legal duty to appropriate funds to the budget for the operations and governance of the Tribe. Tribal Council is the party with the enumerated power in the Constitution to appropriate (which is further supported by Section 5.07 of the Budget and Appropriations Act of 2013) and this duty to appropriate funds is mandated because of the veto that the Ogema has as an enumerated power in the Constitution. In fact, the Constitution states that the Tribal Council shall have the power to “exercise the following fiscal powers...1. **Subject to the veto of the Tribal Ogema**, to adopt, approve or amend the annual budget as presented by the Tribal Ogema and to authorize the expenditure of funds in accordance with such budgets.” See Article IV Section 7(i)1 of the Little River Band of Ottawa Indians Constitution, emphasis added by the Court. When Tribal Council voted and that vote on the veto failed, both the ordinance and the Constitution both make it clear which budget is in place: the one he signed on December 13, 2024 without the amendments. For those reasons, the Court finds that appropriating funds is a Constitutional duty of Tribal Council when a budget is in place. And again, here one is in place because on December 13, 2023 Tribal Council held a vote to override the Ogema’s veto and that vote failed.

Because the provisions found in the Budget and Appropriations Act (2013) are mandatory, they are ministerial. This is supported by the mandates in the Budget and Appropriations Act of 2013. The Budget and Appropriations Act of 2013 states in Article III. Definitions:

“301. *General*. As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings. The word “shall” is always mandatory and not merely advisory.”

Section 5.07 of the Budget and Appropriations Act of 2013 states:

"Appropriations. Not later than March 1, June 1, September 1, and December 1 of each year, the Tribal Council **SHALL** by resolution, appropriate funds for expenditure for the following fiscal quarter." **Emphasis** is the Court's.

Section 5.07 does not say Tribal Council shall vote on whether or not to appropriate funds. It says **SHALL** appropriate. Accordingly, the Court finds that the third prong of the test is met and the act (appropriating funds) is ministerial.

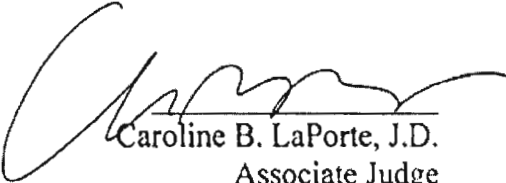
No other remedy exists here because it is **January 11, 2024**. Accordingly, the Court finds that the fourth prong of the test is met. There are no other remedies that exist that might achieve the same result once funds are being expended.

The Plaintiff has a clear legal right to the performance of a specific duty sought, Tribal Council is the party that has that clear legal duty to perform the act requested, the act is ministerial, and no other remedy exists that might achieve the same result. Because Tribal Council failed to override the veto, the Court finds that there **IS** a budget as a matter of law. As the Court has applied the test for a writ of mandamus and for ex-parte relief and found that the factors are satisfied for both, the request for the ex-parte writ of mandamus is **GRANTED**.

Accordingly Tribal Council is hereby **ORDERED** to appropriate funds for the FY2024 Budget in accordance with the Budget and Appropriations Act of 2013. Failure to do so by **1:00 P.M. EST January 12, 2024** will result in a show cause hearing for **EVERY MEMBER OF COUNCIL** on Friday January 12, 2024 at 2:00 P.M. EST.

Additionally, the Court **ORDERS** the Defendants to file the resolution appropriating funds to the **CORRECT BUDGET** as stated in this Order to the Court by **1:00 PM EST on January 12, 2024**.

IT IS SO ORDERED this **January 11th, 2024** at **7:45 P.M.**


Caroline B. LaPorte, J.D.
Associate Judge

CERTIFICATION OF SERVICE

I certify a copy of this Order was sent via email to the parties on this day.

1-11-24
Date

Spring Madacs
Court Clerk/Court Administrator

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

LITTLE RIVER BAND
OF OTTAWA INDIANS
TRIBAL COURT

COMPLAINT
Page 1 of 5 pages

CASE NO.

24-010-6C

Court address

3031 Domres Road, Manistee, MI 49660

Court telephone no.

(231) 398-3406

Plaintiff's name(s), address(es), phone no(s). & email address(es):

Ogema Larry B. Romanelli, in his official capacity
2608 Government Center Dr.
Manistee, MI 49660

Plaintiff's attorney, bar no., address, phone no. & email address:

Dennis M. Swain P29866
2608 Government Center, Dr.
Manistee, MI 49660
(231) 398-6822
dennisswain@lrboi-nsn.gov

v

Defendant's name(s), address(es), phone no(s). & email address(es):

LRBOI Tribal Council, Speaker Tammy Burmeister,
Recorder Pam Johnson, Councilors Garry DiPiazza, Shirley
Wever, Misty Silvis, Shannon Crampton, Julie Wolfe, Ron
Wittenberg, and Al Metzger

(231) 398-6845

FOR ITS COMPLAINT, PLAINTIFF(S) STATE(S) AS FOLLOWS: (attach additional pages, if necessary)

See attached.

01/11/2024
Date

Signature of Plaintiff or Plaintiff's Attorney

COMPLAINT

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1-11-24 872

LITTLE RIVER BAND OF OTTAWA INDIANS

TRIBAL COURT

3031 Domres Rd., Manistee, MI 49660

231-398-3406

tribalcourt@lrboi-nsn.gov

Ogema Larry B. Romanelli, in his official capacity,
Plaintiff.

V.

File No. **24-010-GC**
Hon.

LRBOI Tribal Council,
Speaker, Tammy Burmeister, Recorder, Pam Johnson,
Councilors, Gary DiPiazza, Shirley Wever, Misty Silvis,
Shannon Crampton, Julie Wolfe, Ron Wittenberg, and
Al Metzger.

Defendants.

Dennis M. Swain
Attorney for the Plaintiff
2608 Government Center Dr.
Manistee, MI 49660
(231) 398-6822
denniswain@lrboi-nsn.gov

**VERIFIED COMPLAINT FOR AN EX-PARTE ORDER IN THE NATURE OF A WRIT
OF MANDAMUS**

1. Plaintiff is an enrolled member of the LRBOI, and he is the elected Ogema of the Tribe.
2. The LRBOI is a sovereign Indian nation, recognized by federal law, and governed by the Tribe's constitution and laws.
3. Article V, § 5(a)(5) gives the Ogema the sole power to:

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Timely prepare and present the Annual Tribal Budget to Tribal Council for approval and other action and to keep the Tribal Council fully advised as to the financial condition and needs of the Tribe, preparing monthly reports for the Council, and making quarterly reports available to the membership.

4. On or about August 28, 2023, the Ogema presented the 2024 Annual Tribal Budget to the Tribal Council.
5. On or about November 29, 2023, the Tribal Council submitted a proposed budget with amendments to the Ogema for approval.
6. On or about December 1, 2023, the Ogema vetoed the proposed budget amendments pursuant to Article V, § 6 of the LRBOI Constitution.
7. On or about December 13, 2023, the Tribal Council failed to override the Ogema's veto.
8. On or about December 13, 2023, the Ogema approved, signed, and filed his 2024 Annual Budget without amendments.
9. Section 5.13 (e) of the Budget and Appropriations Act of 2013 required the Tribal Council to return the tribal budget without amendments to the Ogema for approval and signature.
10. The Ogema's 2024 Tribal Budget was signed and approved before December 31 2023.
11. The Tribal Council has failed and refused to make appropriations for the first quarter of 2024.
12. If an ex-parte order is entered by the Court the public will not be harmed, since the order requested will enable the tribal government to operate and provide services to members.
13. By refusing to appropriate funding for the operation of the tribal government in a manner consistent with the 2024 Budget, the Tribal Council has failed in its duty to fund the tribal government.

14. The operation of the tribal government is essential to the provision of government services to the tribal membership, and the failure to appropriate funds for those services places the tribal membership in peril of losing the services they rely on.
15. The risk of harm to the membership and the staff of the Tribe is immediate, as no budgetary appropriations for the operation of the tribal government and government services have been made for the first quarter of 2024.
16. The harm to the Tribal membership outweighs the harm to the defendant if the Court grants an ex-parte order.
17. Without such appropriations government operations must cease, and all services to members and to Tribal Elders, including health care, must cease.
18. Tribal members, especially Tribal Elders will face irreparable injury from lack of services and care without an ex-parte order.
19. The Plaintiff has demonstrated in these pleadings that he is likely to prevail on the merits.
20. Councilors Shannon Crampton, Julie Wolfe, Ron Wittenberg, and Al Metzger have persistently acted in bad faith in furtherance of a political agenda to unlawfully obstruct the appropriation of budgeted funds for the operation of the tribal government.

Wherefore, the Plaintiff prays the Court to enter an Ex- Parte Order in the nature of a Writ of Mandamus directing the Tribal Council to make appropriations of funds for government operations in a manner consistent with the 2024 Annual Budget approved and signed by the Ogema on or about December 13, 2023, to enter an Order declaring that the Annual Budget approved and signed by the Ogema on or about December 13, 2023 is the final annual Tribal

Budget for 2024, together with such other and further relief as shall be consistent with equity and good conscience.

I swear or affirm that the foregoing allegations are true to the best of my knowledge, information, and belief.

Date: 1-11-2023

Larry B. Romanelli
Larry B. Romanelli, Ogema

Notary:

Michelle L. Bourdon

Michelle L. Bourdon
Notary Public, Muskegon County, MI
My commission Expires May 19, 2026

1/11/23



Date:

Dennis M. Swain, Attorney for Plaintiff

LITTLE RIVER BAND OF OTTAWA INDIANS

TRIBAL COURT

3031 Domres Rd., Manistee, MI 49660

231-398-3406

tribalcourt@lrboi-nsn.gov

Ogema Larry B. Romanelli, in his official capacity,
Plaintiff.

V.

File No. *24-010-GC*
Hon.

LRBOI Tribal Council,
Speaker, Tammy Burmeister, Recorder, Pam Johnson,
Councilors, Gary DiPiazza, Shirley Wever, Misty Silvis,
Shannon Crampton, Julie Wolfe, Ron Wittenberg, and
Al Metzger.

Defendants.

Dennis M. Swain
Attorney for the Plaintiff
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Manistee, MI 49660
(231) 398-6822
denniswain@lrboi-nsn.gov

**MEMORANDUM IN SUPPORT OF COMPLAINT
FOR MANDAMUS**

1. Jurisdiction.

The Tribal Court has jurisdiction over this case pursuant to Article VI, § 8 (a) and (f), as
this matter is a case based upon law and equity within the territorial or membership-based

jurisdiction of the tribe involving issues of tribal constitutional and statutory law. The Plaintiff requests an order or writ granting relief herein.

2. Standing.

The Plaintiff has standing to bring this case pursuant to LRBOI Constitution Article V§ 5(a)(5) which gives the Ogema the power to:

Timely prepare and present the annual Tribal Budget to the Tribal Council for approval or other action and to keep the Tribal Council advised as to the financial condition of the Tribe, preparing monthly reports for the Council, and making quarterly reports available to the membership.

Article V§(a)(6) of the Constitution gives the Ogema the further power:

To have veto power over actions of the Tribal Council modifying the Tribal Budget or appropriation items as provided in subsection (c) of this Section 5.

Article V§5(c) gives further authority to the Ogema as follows:

Every action taken by the Tribal Council, whether by ordinance, resolution, or appropriation, which modifies the Tribal Budget submitted for approval by the Tribal Ogema, shall be presented to the Tribal Ogema for his/her approval and signature before it becomes effective. The Tribal Ogema shall approve or disapprove of the action taken by the Tribal Council within seven (7) days after the item is submitted to the Tribal Ogema by the Tribal Council. If he/she disapproves of the action taken by the Tribal Council, he shall return it to the Tribal Council within the seven (7) days provided, specifying his/her objections. If after reconsideration it again passes the Tribal Council by an affirmative vote of six (6) of the nine (9) Tribal Council members, it shall become law and he/she shall sign it notwithstanding his/her objections.

Taken together these provisions give the Ogema standing to bring this action.

3. Factual background.

On or about August 8, 2023, the Ogema submitted the first draft of his annual tribal budget to Tribal Council. The Tribal Comptroller General issued a memo to the Ogema raising issues with the draft budget on September 13, 2023. Late on October 13, 2023, the Ogema revised the tribal budget and presented a second draft of the budget to Tribal Council for approval. On or about November 30, 2023, the Tribal Council held an emergency meeting and modified the Ogema's draft of the budget. On or about December 1, 2023, the Ogema vetoed the modified budget presented by the Council. On or about December 20, 2023, the Ogema signed the second draft of the Tribal Budget and submitted it to the Tribal Council and the financial officers of the Tribe.

Since the failure to override the Ogema's veto of the Tribal Council's modifications to the Tribal Council four members of the Tribal Council have unlawfully combined to obstruct the implementation of the Tribal Budget, which became the lawful budget of the Tribe following the failure to override the Ogema's veto.

4. Discussion.

A. Budget Procedure.

The LRBOI Constitution spells out the authority of the Ogema to prepare and present a Tribal Budget to the Tribal Council. It is clear that the Council may seek to modify the Ogema's budget, and that the Ogema may approve the modifications or veto the modifications. The Tribal Council may then seek to override the Ogema's veto. The Constitution requires the concurrence of six (6) of the nine councilors to override the Ogema's veto. The Constitution specifies that a modified budget becomes the law, and it must be signed by the Ogema if an override vote is successful. The Constitution does not

specify what happens if an override vote is unsuccessful. The Plaintiff submits that it is not necessary that the Constitution states a result.

First, logic dictates that the Ogema's budget is the Tribal Budget in the event of a failure to override a veto. The logical reasoning is simple and straightforward. If the Ogema submits a Tribal Budget, the Tribal Council may approve it or modify it. If the Tribal Council modifies the Tribal Budget, the Ogema may accept the modifications or veto them. If the Ogema vetoes the modifications, the Tribal Council may seek to override the Ogema's veto. If the override is successful, then the modified budget becomes the law. If the override effort is unsuccessful, then the unmodified Tribal Budget becomes the law. Second, the Tribal Council has addressed the issue in the Budget and Appropriations Act of 2013, Ordinance # 13-100-04. Section 5.13 deals with the enactment and execution of the Tribal Budget. Section 5.13(e) of the Budget and Appropriations Act of 2013 provides:

If, after reconsideration, fewer than six (6) Tribal Council members approve the budget, it shall be returned to the Ogema, without the amendments, who shall approve it.

The Tribal Council clearly created an ordinance that embodies the logical result discussed above. In this case, the Ogema submits that the October 13, 2023, Tribal Budget submitted by the Ogema, without amendments, is the 2024 Tribal Budget. That budget was signed and submitted by the Ogema on or about December 20, 2023.

B. Balanced Budget.

It has been suggested that the 2023 budget submitted by the Ogema is not a balanced budget as is required by the Budget and Appropriations Act of 2013, Article IV, § 4.01.

A minority of the Tribal Council insists that the Ogema's Tribal Budget contains a supplemental appropriation of general fund dollars in the amount of \$4,211,515.00, and that the budget is therefore unbalanced. This assertion ignores past budgets which contained supplemental appropriations, and which were approved by the Tribal Council. In addition, a careful reading of the Budget and Appropriations Act of 2013 is contrary to the claim that a supplemental appropriation of general fund dollars is not a revenue source. Sections 5.03 and 5.04 of the Budget and Appropriations Act of 2013 state the process for identifying revenue sources for the annual tribal budgets. Section 5.04 of the act provides as follows.

5.04 Executive Summary Required. By May 31st of each year, the Ogema shall provide Tribal Council with an executive summary of expected revenues for the current and upcoming fiscal year from each revenue source including but not limited to net gaming revenue, grants, rental fees, utility fees, sales, or other taxes, and distributions from gaming and non-gaming enterprises or other revenue sources. (Emphasis added.)

A supplemental appropriation from the Tribe's general fund is clearly a revenue source.

C. Constitutionality.

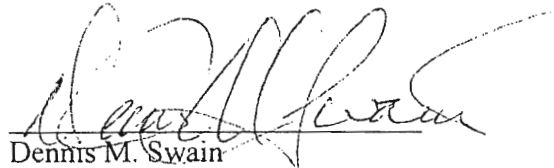
Certain members of the Tribal Council have asserted that Section 5.13(e) of the Budget and Appropriations Act of 2013 is unconstitutional. This is a false canard. The provision of the act in question provides clarity to the situation where the Tribal Constitution is silent about a particular question. In this case, the Constitution does not specify a particular result when Tribal Council fails to override the Ogema's veto of the Council's budget amendments. Article IV, Section 7(j) of the LRBOI Constitution contains a necessary and proper clause. It reads:

To take action, not inconsistent with this Constitution or Federal law which shall be necessary and proper to carry out the sovereign legislative powers of the Tribe.

While the LRBOI Tribal Courts have not examined the Necessary and Proper Clause of the LRBOI Constitution in Article IV, Section 7(j). Cases interpreting the meaning and application of that clause in the United States Constitution have a long history.

Beginning with the case of McCulloch v. Maryland, 17 U.S. 316, 4 LEd. 579 (1819), it has been recognized that the United States may exercise implied powers essential to the full exercise of the express powers granted by the Constitution. The provisions of Section 15.3 (e) of the Budget and Appropriations Act of 2013 are certainly necessary and proper to the implementation of an annual tribal budget.

Date: 01/11/2024


Dennis M. Swain
Attorney for Plaintiff