

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

OGEMA ROMANELLI,
Plaintiff,

v.

LRBOI TRIBAL COUNCIL,
Defendant.

Case No. 21-577-GC

Honorable Angela Sherigan

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ORDER REGARDING PRELIMINARY INJUNCTIVE ORDER

A hearing was held on September 17, 2021, regarding the Ogema's Motion for a Preliminary Injunction, in which all parties and/or their attorneys appeared. The request for a preliminary injunction – restraining order is based on the three counts in the Ogema's Complaint.

BACKGROUND ON COUNTS

Count I

On August 18, 2021, Tribal Council passed Resolution 21-0818-206, *Accepting Information Technology Restructuring Report & Adopting One IT Restructure to Improve Efficiency and Coverage of the System and to be able to adequately respond the IT challenges due to the COVID-19 Pandemic*, which in effect, combines the Government and the Casino IT departments into one.

The Ogema alleges that this Resolution usurps his power to manage the economic affairs, enterprises, property, and other interest of the Tribe in violation of the Constitution.

Count II

The Ogema alleges that the Council is refusing to proceed on work session requests from the Executive branch if the Ogema is not present and that the Council cannot directly or indirectly require the Ogema to attend work sessions.

Count III

The Ogema alleges that the Council is attempting to usurp his power by "ordering" his staff and members of the LRCCR to attend a meeting for the purpose of "Integrating/Restructuring the accounting for 1 Accounting Structure", and that integrating and/or restructuring of any

governmental department and any LRCR department is a management decision reserved to the Ogema.

The Ogema is asking for a preliminary injunction – restraining order on all three counts.

In matters involving requests for injunctive relief, this Court has repeatedly applied a four-part test in determining if an injunction will issue¹:

- 1) harm to the public interest if an injunction issues;
- 2) whether harm to the applicant in the absence of a stay outweighs the harm to the opposing party if granted;
- 3) the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; and
- 4) demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted

The moving party must prevail on all counts.

OPINION

Prior to the issuance of this Order, the parties stipulated to the dismissal of Counts II and III, which was approved and issued in a separate Order.

Count I – Resolution 21-0818-206, Information Technology Restructuring

Resolution 21-0818-206, in effect, combines the Government and Casino Information Technology (IT) Departments into one department, with the Chief Information Officer reporting administratively to the Ogema and to also receive direction and report to the Tribal Council Speaker and Tribal Court Chief Judge.

The Ogema argues that this usurps his power to manage the economic affairs, enterprises, property, and other interest of the Tribe in violation of the Constitution.

The Council argues that it is not usurping the power of the Ogema because the Resolution has the Chief Information Officer reporting administratively to the Ogema.

The Casino Resort is an enterprise/property of the Tribe. The Constitution at Article V, Section 5(a)(8) gives the Ogema the power to manage the enterprises and property of the Tribes.

As to part 1) harm to the public interest if an injunction issues: The Court finds that there will be no harm to the public interest if an injunction issues as it will maintain the status quo. The IT departments of the Government and the Casino are separate so there would be no disruption.

As to part 2) whether the harm to the applicant in the absence of a stay outweighs the harm to the opposing party if granted: This is a balancing test. The harm to the applicant Ogema

¹ The Court applies a similar test when requests are made Ex-Parte.

would be that the Council would be directing and managing the Government IT department by reassigning the staff duties to work on the merging of the two departments, in effect usurping the Ogema's power. The harm to the opposing party Council would be that the timeline as set out in the Resolution would be delayed. The Government IT department is currently short staffed and has four openings. The Court finds that the harm to the Ogema is greater.

As to part 3) the strength of the applicant's demonstration that the applicant is likely to prevail on the merits: the Court finds that the Ogema has made a showing of *prima facie*, in that the Council, by this Resolution, is interfering with the duties reserved to the Ogema by directing the Government IT staff to work on this project.

As to part 4) demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted:

The Ogema argues that employee morale is down, some have left, including one that he states that this Resolution was part of the reason, so there is a risk of losing more staff, that the government and casino still have not recovered from the Covid-19 shut down, and IT is still short staffed. Additionally, the Ogema argues that there could be financial risk and concerns over HIPAA and confidential files, IGRA and the Compact with the State of Michigan.

The Council argues that the Ogema's pleadings do not address the 4 prongs and therefore must fail.

While the Court would have liked a more developed pleading, there was enough presented on the record at the hearing. Additionally, the Court will not consider "what-ifs" or potential problems for the purposes of deciding a request for injunctive relief.

However, as it related to part 4, the Court finds that it is clear that the Ogema would suffer irreparable harm if the injunction does not issue. This Tribe, through the Constitution, is a three-branch government, and when one branch reaches into the constitutionally reserved powers of another branch, that is a usurpation that cannot be undone.

THEREFORE, the Court finds that the Ogema has meet the burden needed for the issuance of an injunction in the form of a Stay, which will be issued separately.

11-5-21
Date

Angela Sherigan
Honorable Angela Sherigan

