

Barry LeSieur
Tribal Attorney

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9 January 2007

Thomas Wiensch
Oneida County Corporation Counsel
Post Office Box 400
Rhineland, WI 54501-0400

RE: Interpretation of Wisconsin Mutual Aid Statute § 66.0313 Wis. Stats.

Dear Assistant Corporation Counsel Wiensch:

I am writing in regard to your opinion provided to Lt. Jim Wood, Oneida County Sheriff's Department, [Exhibit A] concluding that tribal law enforcement agencies are not included within the mutual assistance statute (§ 66.0313 Wis. Stats.). The Lac du Flambeau Band of Lake Superior Chippewa is of the opinion that tribal law enforcement agencies are included within the mutual assistance statute based upon the following statutory interpretation:

§ 165.92(2)(a). A **tribal law enforcement officer** who meets the requirements of § 165.84(4)(b)1., (bn) 1. and (c) **shall have the same powers** to enforce the laws of the state, and to make arrests for violations of such laws **that sheriff's have, including power granted to sheriff's under §§ 59.27 and 59.28** and under the common law, and shall perform the duties accepted under § 165.85(3)c). [Emphasis added.]

§ 59.28(2). County law enforcement agencies may request the assistance of law enforcement personnel or may assist other law enforcement agencies as provided in §§ **66.0313** and 66.0513. [Emphasis added.]

In summary, under § 165.92(2)(a) tribal law enforcement officers have the same powers that sheriff's have, including the power granted to sheriff's under § 59.28. Where under § 59.28(2) county law enforcement may request assistance of law enforcement personnel or may assist other law enforcement

Lac du Flambeau Band
of Lake Superior Chippewa Indians

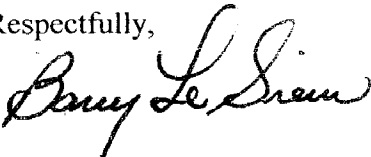
P.O. Box 777 • Lac du Flambeau, Wisconsin 54538 • (715) 588-2072 • FAX# (715) 588-2073

agencies as provided in § 66.0313. That is, under § 165.92(2)(a) tribal law enforcement officers (under the authority of § 59.28) to the same extent as county law enforcement may request assistance of law enforcement personnel or may assist other law enforcement agencies as provided in § 66.0313. Therefore, tribal law enforcement officers fall within the mutual assistance provisions of § 66.0313.

Based upon your opinion, Oneida County law enforcement, as well as other law enforcement agencies, have refused or been reluctant to respond to requests for assistance from the Lac du Flambeau Band of Lake Superior Chippewa Police Department. Your opinion has created uncertainty as to whether the Lac du Flambeau Band of Lake Superior Chippewa Police Department can rely on surrounding law enforcement personnel to respond to requests for assistance which in turn may leave Lac du Flambeau Band of Lake Superior Chippewa police officers without assistance in dangerous situations.

The Lac du Flambeau Band of Lake Superior Chippewa believes this matter is of such importance to warrant an opinion from the Wisconsin Attorney General's Office, and is requesting such an opinion by forwarding a copy of this letter to the Wisconsin Attorney General's Office.

Respectfully,



Barry LeSieur
Tribal Attorney

enclosures: Attachment A
cc w/encl: Victoria A. Doud, Tribal President
Elliot Rising Sun, LDF Police Chief
Wisconsin Attorney General's Office

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6 pages
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January 28, 2008

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VIA FACSIMILE: (715)588-7295

RE: Interpretation of Wisconsin Mutual Aid Statute Sec. 66.0313 Wis. Stats.

Dear Attorney LeSieur:

Thank you for your letter of January 9, 2008. I appreciate you providing me with a summary of the research that you have conducted. I also appreciate that you have taken the time to request an opinion of the Attorney General on this important issue. I think an Attorney General's opinion will be very valuable in answering the questions at hand.

I agree that, under Wis. Stat. Sec. 165.92(2)(a), a tribal law enforcement officer meeting the requirements of Sec. 165.84(4)(b)1, (bn) 1. and (c) seems to be vested with the powers of a sheriff including the ability to request assistance under Sec. 59.28(2). The interplay of this statute with a number of other statutes, however, leaves me uncertain whether your interpretation is correct. In my opinion the following issues remain:

1. I believe there is some tension between the above statutes and Wis. Stats. Sec. 165.90 which seems to provide for a written agreement between tribal and non-tribal law enforcement officers for cooperation and assistance.
2. It would seem to me that a provision of assistance under Sec. 59.28 is not mandatory. Despite that, it is my understanding after speaking with Chief Deputy John Sweeney that the County and the Tribe have a strong history of cooperation which both parties intend to continue.
3. It is unclear whether, absent an agreement under Sec. 165.90, there would be means for a county law enforcement agency to seek the assistance of a tribal agency.

4. As my memo to Officer Wood pointed out, Wis. Stats. Sec. 66.0313 indicates that for the purposes of Sec. 895.35 and Sec. 895.46, officers who assist are deemed to be employees of the requesting agency. Sec. 895.35 requires the representing municipalities to pay costs in certain situations if proceedings are brought against officers and the officers are exonerated. Wis. Stats. Sec. 895.46 requires that municipalities pay certain judgments against officers. Given the fact that the Lac du Flambeau Band of Lake Superior Chippewa Indians is not a municipal subdivision, but a sovereign entity, it's unclear to me whether and how these statutes would be applied. For instance, if our officers responded to a request for assistance, and proceedings were brought or liability were established, would the Lac du Flambeau Band of Lake Superior Chippewa Indians, given tribal sovereignty, be required to pay judgments and costs, and, if not, would those officers and/or our agency face exposure. It would seem to me that issues of this nature might properly be dealt with in an agreement under Wis. Stats. Sec. 165.90.
5. What are the limits, if any, of the ability of the Oneida County Sheriff's Department to enforce criminal and other laws on the portion of the Lac du Flambeau reservation which is within Oneida County, both on tribal property in said part of the reservation and otherwise. As you know, Wisconsin is a Public Law 280 State, which allows county law enforcement officers to enforce state laws on the portion of the reservation within Oneida County. It is not entirely clear to me, however, whether the sheriff's office can enforce municipal and county laws, including ordinances which adopt state statutes (such as non-criminal disorderly conduct).

I have received and reviewed a copy of Resolution No. 58 (95) of the Lac du Flambeau band. A copy is attached for your convenient reference. I am told that this may represent, in part, an attempt to waive sovereign immunity with regard to the mutual aid statutes. Given the plain language of the Resolution, it would seem to me that the waiver would be effective only as to liability under Wis. States Sec. 165.92(3), which imposes liability for a tribal officer on the tribe rather than political subdivisions of the state. This section does not seem to deal in any way with liabilities under Sec. 895.35, 895.46, or any other liabilities relating to officers of political subdivisions of the state assisting tribal officers. Please let me know if you believe the above resolution constitutes a waiver of sovereignty with regard to mutual assistance (either as described in Sec. 895.35 or 895.36 or otherwise).

Additionally, if another resolution exists which may have waived sovereign immunity concerning mutual aid, please let me know. Finally, I would appreciate it if you could provide me with the authority (both in federal law and in tribal law, which sets out the procedure for a waiver of sovereign immunity). I checked the tribal constitution, etc. on your web-site and have not yet located anything in that regard.

By copy of this letter, I am providing a copy of my memo to Lieutenant Wood dated September 18, 2006, and a copy of Resolution No. 58(95), to the Attorney General's office with the request that they address the above issues, either in the opinion they prepare for you or in a separate opinion.

Thanks again for requesting an Attorney General's opinion in this situation. I think that will be very helpful. I look forward to working with you in an effort to resolve this matter.

Sincerely,

Thomas D. Wiensch
Assistant Corporation Counsel
State Bar No.: 1018958
Telephone No.: (715)369-7824

TDW/mak

Enclosures:

1. 9/18/06 Memo to Lt. Jim Wood
2. Resolution No. 58 (95)

cc: Wisconsin Attorney General's Office ✓
Jeff Hoffman, Sheriff
John M. Sweeney, Chief Deputy
Andy Smith, County Board Chairman
Martha Milanowski, Vilas County Corp. Counsel
- all w/enc.

P.S. To the Attorney General's Office:

Please let us know if the Attorney General's can address the above issues without receiving a separate formal request from Oneida County. Please also let us know if you can provide us with a copy of the opinion that you issue.

Thank you.