

FILED  
IN THE HO-CHUNK NATION  
~~TRIAL~~/SUPREME COURT  
APR 13 2007  
*YME*  
Clerk of Court/~~Assistant~~

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE  
HO-CHUNK NATION SUPREME COURT

GEORGE LEWIS,

Appellee,

vs.

HO-CHUNK NATION ELECTION

BOARD, ET AL

Appellant

ORDER for RECONSIDERATION

Case No.: SU 06-07

This Court issued a decision in this matter on March 12, 2007 and ordered that it be served on the parties to the case. During the pendency of this case, this Court requested that the Department of Justice, headed by the Attorney General of the Ho-Chunk Nation, participate in as *Amicus Curie* or “friend of the Court.” *Scheduling Order* dated December 29, 2006. For reasons unknown to the Supreme Court the Attorney General declined to do so. *Lewis v. HCN Election Bd*, SU 06-07 n. 3 (HCN S. Ct. Mar. 12, 2007). Despite being invited to participate and deciding not to, the Attorney General on March 16, 2007 filed a *Motion for Reconsideration*.<sup>1</sup>

In the *Motion for Reconsideration* the HCN Dept. of Justice states that it has the responsibility and duty to serve as an advocate of the CONSTITUTION OF THE HO-CHUNK NATION. The HCN Dept. of Justice asserts this gives it independent standing to bring the *Motion for Reconsideration*. The irony of this position is that in arguing its *Motion for Reconsideration* the Department of Justice admits that it abdicated its responsibility and duty to serve as an advocate of the CONSTITUTION of the Ho-Chunk Nation. *Id.* at 1. “The DOJ . . . abstains from representing a party in disputes between competing branches of government.” Knowing the

<sup>1</sup> The initial filing was deficient because the signatory attorney was NOT a member of the HCN Bar as required on the date of the filing.

1 difficult position that the DOJ found itself in<sup>2</sup> this Court requested its position as a friend of the  
2 Court in precisely the role it seeks now.

3 This Court has looked at the *Department of Justice Establishment Act*, which is the chief  
4 source of the authority the Attorney General asserts gives her the mantle as guardian of the HCN  
5 CONSTITUTION and finds it wanting. 1 HCC § 8. In the past the Attorney General has advocated  
6 indefensible positions which should have called for a dispassionate Constitutional assessment in  
7 the redistricting cases. Instead, the DOJ argued that no action in the face of a manifestly mal-  
8 apportioned districting scheme constituted redistricting bringing the Legislature closer to one  
9 man one vote principles. The DOJ was held in contempt in that case for advancing a position  
10 that had no support in the law, the CONSTITUTION, or reasoned extension of existing law, i.e., that  
11 no change was redistricting. *See Chloris A. Lowe Jr. and Stewart Miller v. Ho-Chunk Nation*  
12 *Legislators and HCN Election Board*, CV 00-104 (HCN Tr. Ct. Nov. 19, 2001) (the entire case  
13 file of this case demonstrates that the Attorney General persisted in presenting and defending  
14 positions without sound Constitutional rational and was found in contempt of court in CV 00-  
15 104a.) Given the fact that the Attorney General did NOT issue guidance to the HCN Election  
16 Board in this case as would be expected, it is especially surprising that she should claim the  
17 mantle of defender of the HCN CONSTITUTION without having informed this Court of the official  
18 advice she gave the HCN Election Board, if any.<sup>3</sup>

19 What the late entry into this case by the Attorney General has done is present this Court  
20 with a plausible reading of the HCN CONSTITUTION which should have been presented to this  
21

---

22 <sup>2</sup> The Attorney General is the head of the DOJ and is appointed by the President, precisely the party appellant  
23 Francis Decorah sought to have removed for malfeasance. Moreover, the DOJ is the department who the President  
24 apparently claimed reviewed the actions upon which the supposed malfeasance was based. Therefore, the  
25 disinterestedness of the DOJ would be hard to maintain in the context of this case.

<sup>3</sup> The soundness of an Opinion of the Attorney General is that it must consider all possible outcomes and  
interpretations of a law or constitutional provision not just take a position of political expediency of the moment.  
Moreover, said opinions are merely advice and not binding on the Courts which remain the final authority on legal  
and Constitutional interpretation. Only the internal consistency and sound legal reasoning within them gives them  
authority.

1 Court in *Oral Argument*. However, the reading opined by the Attorney General, while appealing  
2 on its face is not the sole interpretation that can be given.

3 What compounds the difficulty of this case is the fact that the HCN Election Board and  
4 the appellee failed to respond to the *Motion to Reconsider*. This Court, like most Courts, relies  
5 on the officers of the Court, including the members of the HCN Bar which appear before it, to  
6 advise it on, not just their own client's wishes, but on the soundest interpretation of the law. No  
7 other officer of the Court stepped forth and commented on the assertions made in the *Motion to*  
8 *Reconsider*. This leaves the question raised by the Attorney General, while troubling, open to  
9 resolution in another case, unless taken up and resolved in this case on remand where it was  
10 joined by the Attorney General's raising it here. What makes that difficult is that the Attorney  
11 General refused to participate and is not a party to any action below. Therefore, it would have to  
12 show that it had standing to intervene on the behalf of a client with a real case and controversy.<sup>4</sup>

13 In past cases, in the beginning of the interpretation of the HCN CONSTITUTION the  
14 Courts called expert witnesses including members of the HCN Constitutional Reform Committee  
15 to establish the intent of the writers of the HCN CONSTITUTION. See *Joyce Warner et. al. v.*  
16 *HCN Election Bd*, CV 95-03, 04, 05, 06, 09 & 10 etc (HCN Tr. Ct. July 7, 1995) *aff'd*, *JoAnn*  
17 *Jones v. HCN Election Bd*, SU 95-01, CV 95-05 (HCN S. Ct. Aug. 15, 1995). Many members of  
18 that Committee remain alive today. Given that the Attorney General's position in this case that  
19 the Ho-Chunk Nation would remain leaderless, without anyone heading the Executive Branch  
20 for three months, which includes the period between the General Election and the swearing in of  
21 the new President at the General Election, the proper method would be to have the Trial Court  
22 take testimony of the framers on such an extraordinary scenario as opined by the Attorney  
23 General in her brief seeking reconsideration.

24  
25  

---

<sup>4</sup> In prior cases the Courts have been reluctant to take on cases where the parties appear to have colluded to  
manufacture a case where one did not exist.

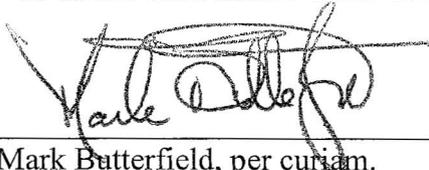
1           Therefore, the Supreme Court vacates that portion of its opinion which appears to give an  
2 advisory opinion on how the succession in the office of the President of the Ho-Chunk Nation is  
3 to occur and remands that issue for a full and proper consideration below. The HCN Court  
4 System works best when all the parties charged with duties accept those duties and discharge  
5 them in accordance with their oath of office instead of taking the path of political expediency and  
6 failing to participate.

7           While the Court is aware that the case was remanded over a month prior, it is unaware of  
8 the progression of the case on remand. It would be appropriate to assume that the Attorney  
9 General would have taken the role she asserts in this case up on remand, especially since having  
10 raised it in this Court it would be improper to attempt a collateral attack in another forum when  
11 the issue has already been raised here. To do otherwise would raise troubling questions about  
12 the respect the Attorney General has for the authority of this Court and by extension all the  
13 Nation's Courts.

14           Therefore, this Court vacates that portion of its opinion which gives an advisory opinion  
15 regarding the succession of the Vice President. However, this Court also directs the Trial Court  
16 to closely examine and reconcile ART IX § 9 (c) with the first sentence of § 9(b) which states that  
17 "If less than (12) months remain before the next General Election, the Vice President *shall* serve  
18 as President pro tempore."

19           In accordance with the above, the Supreme Court vacates the portion of its opinion which  
20 constitutes the first paragraph of page 8 of its *Decision* of March 12, 2007.

21           IT IS SO ORDERED THIS 13th day of April, 2007.

22 

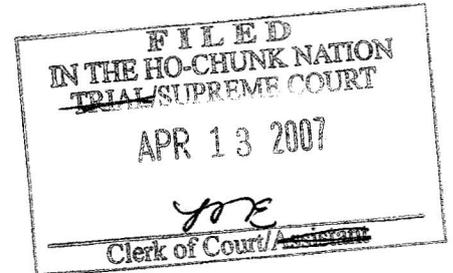
23 \_\_\_\_\_  
24 Hon. Mark Butterfield, per curiam.

**CERTIFICATE OF SERVICE**

I, Mary K. Endthoff, Clerk of the Ho-Chunk Nation Supreme Court, do hereby certify that on the date set forth below, I served a true and correct copy of the Order for Reconsideration in Case No. SU06-07, upon all persons listed below:

**By United States Postal Service:**

**Attorney John S. Swimmer  
Godfrey & Kahn, S.C.  
780 North Water Street  
Milwaukee, WI 53202-3590**

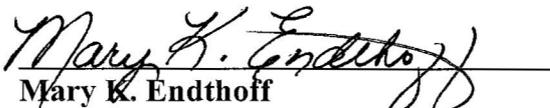


**Attorney Glenn C. Reynolds  
407 East Main Street  
Madison, WI 53703**

**Attorney Paul Stenzel  
Stenzel Law Office  
P.O. Box 11696  
Shorewood, WI 53211**

**Sheila Corbine  
Attorney General  
HCN Department of Justice  
P.O. Box 667  
Black River Falls, WI 54615**

**Date: April 13, 2007**

  
\_\_\_\_\_  
**Mary K. Endthoff  
HCN Supreme Court Clerk**

