

IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Shakopee Mdewakanton
Sioux (Dakota) Community

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Court File No. 025-92

MEMORANDUM AND ORDER

Summary of Procedural History

This matter arises under Section 63 of the Shakopee Mdewakanton Sioux Community Corporation Ordinance, Ordinance No. 2-27-91-004 ("the Ordinance"). Under that section, the General Council of the Shakopee Mdewakanton Sioux Community ("the Community") has provided that, before any actions to amend or repeal the Ordinance are effective, this Court must issue a declaratory judgment that such action "is in the best interests of the Community".

On November 5, 1992, the General Council of the Community passed Resolution No. 11-05-92-001 ("the Resolution"). The effect of the Resolution would be to amend the Ordinance. On November 20, 1992, the Community, through its counsel, petitioned this Court for the declaratory judgment called for in the Ordinance. The Community filed with the Court the text of the Resolution, together with a copy of the transcript of the November 5, 1992 meeting of the Community's General Council at which the Resolution was passed. On December 7, 1992, Judge Buffalo of this Court issued an Order

declaring that the amendments were in the best interests of the Community.

Thereafter, Little Six, Inc., ("Little Six") a corporation chartered by the Community under the Ordinance, moved to Intervene in this action, to vacate the Court's December 7, 1992 Order, and to dismiss the Community's petition for a declaratory judgment. Both Little Six and the Community filed memoranda and supporting materials, and a hearing was held. Subsequently, the Community moved to supplement the record with materials relating to actions of the Bureau of Indian Affairs concerning the Ordinance, and Little Six filed objections thereto.

Today, we deny Little Six's motions to interevne, to vacate, and to dismiss; and we deny the Community's motion to supplement the record. The effect of our action is to permit the December 7, 1992 Order of this Court to stand.

Discussion

To our knowledge, the provisions of section 63 of the Ordinance are unique. Under those provisions, this Court is given a singularly unjudicial function. We are called upon not to apply the law to a particular set of facts, or to review the act of the Community's government to ascertain whether it is consistent with the Community's Constitution or overriding Federal law, but to decide whether the actions of the Community are in the Community's own best interests.

Each of the judges on this Court is an attorney who has worked for some years with Indian tribal governments; and each of us has repeatedly been frustrated by the paternalism imposed upon tribal

governments by their supposed "friends" in Federal and State government, and in the private sector. In an era when tribal governments and the businesses which they own have immense possibilities, and confront powerful competitors and adversaries, the delay, confusion, and difficulty imposed on tribes by entities acting in loco parentis may, in our opinion, be the single most damning problem that tribes face.

So, our duty in this proceeding--to review on policy grounds the actions of the Community's General Council--is disturbing to us. We have approached our duty carefully; and our opinions are colored with the experience and concern we have just described. We have concluded that the Court's role under Section 63 of the Ordinance should be very limited. We will review amendments or repealers to ensure that no fraud, overreaching, or coercion was evident in the proceedings which led to their adoption; that all appropriate procedures were observed during the consideration and adoption of the provisions; and that all persons and entities who legitimately can claim an interest in the deliberations were given a fair chance to be heard in the Community's deliberations. If we are satisfied as to those matters, we will declare that an action of the General Council is in the Community's best interests.

We understand and have some sympathy for the concerns of those who would wish us to take a more active role--who would have us act as a sort of benevolent governor with a veto power over the actions of the Community. And perhaps, if we were to do so, the Community might be steered clear of some actions that could prove to be costly mistakes. But it is our view that the true best interests

of the Community lie along the path of self-determination, where the Community itself, after open debate and fair proceedings, is permitted to make its own mistakes, and achieve its own triumphs.

We have reviewed the Resolution. It clearly is designed to permit the General Council of the Community to assert somewhat more control over the activities of Little Six than the Ordinance previously allowed. This may lead to additional turmoil and uncertainty for Little Six, and that could be damaging to a spectacularly successful and well run corporation; but the Resolution also may ultimately purchase Little Six a broader base of support within the Community, and thereby redound to the benefit of both. Time will decide; we will not.

We have reviewed the materials submitted and discussed by both parties that illuminate the procedures by which the Resolution was adopted. They demonstrate that passage of the Resolution was the culminated extensive deliberation among various interests in the Community. Previous resolutions which would have had a more drastic effect on Little Six had been rejected, and the Resolution was modified to meet certain concerns within the Community. During this extended debate, all parties, including the Chairman of Little Six, were allowed to argue their case without restraint or hinderance.

Under these circumstances, we think it is clear that Judge Buffalo was right when, on December 7, 1992, after reviewing the record of the proceedings, he declared that the Resolution was in the best interests of the Community.

Two final points should be made. First, the Court frankly did

not foresee the difficulties and questions that Section 63 of the Ordinance would pose for persons and entities who might have something to say, during any deliberations we might have on amendments or repealers to the Ordinance. Our rules, governing judicial procedure, do not neatly fit the sort of proceeding contemplated by Section 63; and the parties to this proceedings have done an admirable job struggling with this fact. We have approached the matter ad hoc, and have not held the parties to our rules. Clearly, in the future it would be of assistance if we have provided more specific guidance to the Community, and to others who find themselves in the situation of Little Six, as to these matters; and it is our intent to do so. Second, we deem the actions of the Bureau of Indian Affairs with respect to the Resolution--be those actions approving or disapproving--to be utterly irrelevant to our inquiry, and we therefore have declined to consider them.


ORDER

For the foregoing reasons, it is hereby ORDERED:

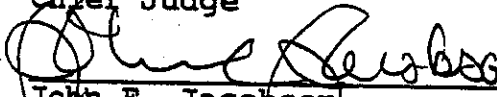
1. That the motion of Little Six, Inc. to intervene, to vacate this Court's December 7, 1992 Order, and to dismiss the Community's Petition for Declaratory Judgment is DENIED; and

2. The motion of the Community to supplement the record is hereby DENIED.


Dated: June 3, 1993



Kent P. Tupper
Chief Judge



John E. Jacobson
Associate Judge



Henry M. Buffalo, Jr.
Associate Judge