



IN REPLY REFER TO:

Tribal Operations

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Midwest Regional Office

Bishop Henry Whipple Federal Building

One Federal Drive, Room 550

Ft. Snelling, MN 55111



JAN 22 2002

Honorable Ann Larsen
President, Lower Sioux Indian Community
39527 Res Highway, P.O. Box 308
Morton, Minnesota 56270

Dear President Larsen:

By letter dated May 16, 2001 from tribal attorney James M. Schoessler, Jacobson, Buffalo, Schoessler & Magnuson, Ltd., the Lower Sioux Indian Community (the Community) has requested a Secretarial election to vote on a proposed amendment to Article III, Section 3. The request was accompanied by Lower Sioux Community Council Resolution No. 50-01, enacted on May 15, 2001.

The Community adopted its constitution on May 16, 1936, in accordance with the Indian Reorganization Act of June 18, 1934, as amended. Article XIII, Amendments states that the Constitution may be amended as follows:

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Lower Sioux Indian Community voting at an election called for that purpose by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote in such election; but no amendments shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a written resolution of the Community Council signed by at least three members of the Council.

Article III, Membership, Section 3 was previously amended to add a subsection (a) which extended the length of time members must live on the reservation to reacquire tribal rights and privileges. That amendment was approved on November 23, 1998, and now reads as follows:

Section 3. Any person who is a member of the Community, but has removed therefrom for a period of two (2) years, shall automatically forfeit

all rights and privileges to the benefits of said community such as land assignments and sharing in community profits.

(a) Any member who does not have the rights and privileges of membership may acquire such rights and privileges by establishing residency in the community for a period of five continuous years; provided that, if a member was a bona fide resident of the Community on the date this subsection (a) was approved by the required Community vote, such member may acquire the rights and privileges of membership under such Community laws as was in effect prior to the date of such vote.

↓ The Community is now proposing to amend Section 3 in its entirety. **Additional privileges to be forfeited now include the right to vote in Community elections,** participation in Community health, safety and general welfare programs. Although the Constitution does not require residency to vote in Community elections, we have been advised by Mr. Schoessler that members are not allowed to vote if they leave the reservation for more than two years. Since the changes to Section 3 affect Article VI, Section 5, **we suggest that the Community also amend Article VI, Section 5 to avoid possible conflict with each other.**

↑ The language of the proposed amendment as written is confusing, and **we are unsure as to the intent of Community.** Are we to assume that those individuals who have reacquired membership privileges before September 1, 2001, and those who may lose membership privileges on or after September 1, 2001 will be eligible to retain the privilege of receiving Community per capita payments, even though they cease to maintain residency on the reservation in the future? However, those individuals who lost their membership privileges but failed to reacquire them before September 1, 2001 will not be eligible for those privileges in the future. The proposed language reads as follows:

Section 3. Membership Privileges.

(a) Full Membership Privileges. All adult enrolled members of the Community shall have full membership privileges subject to the limitations of this section. Full membership privileges shall include the privilege of voting in Community elections, receiving Community land assignments, participating in Community health, safety, and general welfare programs and receiving Community per capita distributions.

Subsection 3(a) defines full membership privileges for adults, **however, privileges for minors are not addressed.** Are minors not considered members until they reach the

age of 18? Clarification is needed as to the intent of this provision. As written, members who have not reached the age of 18 are not eligible to participate in Community health, safety, and general welfare programs, nor will they be eligible to receive a land assignment, even if they are married with a family.

(b) Loss of Membership Privileges. Any adult enrolled member of the Community who ceases to maintain residency in the Community for a period of two consecutive years shall automatically lose membership privileges to the following extent:

(1) An adult enrolled member who loses membership privileges on or after September 1, 2001 shall lose the privileges of voting in Community elections, receiving Community land assignments, and participating in Community health, safety, and general welfare programs, but shall not lose the privilege of receiving Community per capita distributions.

Subsection 3(b)(1) states that adult members who leave the reservation for two consecutive years after September 1, 2001, can no longer vote in Community elections, cannot receive a Community land assignment, nor participate in the Community health, safety, and general welfare programs. However, they shall continue to receive Community per capita distributions. **The Community may want to change the September 1, 2001 date to "on or after the approval date of this amendment." Will these individuals be granted full membership rights in the future, if they meet the five-year time frame defined in Subsection 3(d)?**

(2) An adult enrolled member who loses and does not reacquire membership privileges before September 1, 2001 shall lose the privileges of voting in Community elections, receiving Community land assignments, and participating in Community health, safety, and general welfare programs, and receiving Community per capita distributions.

Subsection 3(b)(2) states that adult members who did not reacquire membership privileges before September 1, 2001, are not allowed to vote in Community elections, cannot receive a Community land assignment, cannot participate in Community health, safety, and general welfare programs, nor can they receive Community per capita distributions. What is the intent of this subsection? **The Community may want to change the September 1, 2001 date to "before the approval date of this amendment."** Are we to assume that these individuals will not be granted full membership privileges

even if they meet the five-year time frame defined in Subsection 3(d)? If so, this subsection appears to conflict with Subsection 3(d).

(c) Membership Privileges for Members Enrolled On or After September 1, 2001. Any adult who is enrolled as a member in the Community on or after September 1, 2001 shall obtain full membership privileges upon maintaining residency in the Community for a period of five continuous years such period beginning any time within five years immediately prior to enrollment or any time thereafter.

Subsection 3(c) refers to a five year waiting period for acquiring membership privileges. **However, when that time frame begins is ambiguous.** Is an individual required to live on the reservation for five years before he applies for enrollment? **If not, shouldn't the five years begin from the date of enrollment or the date the individual applies for enrollment?** **The Community could refer to the time frames defined in the Community's Membership Privilege and Gaming Revenue Allocation Ordinance of 1999, approved by the Area Director on October 20, 1999, instead of using the language "such period beginning any time within five years immediately prior to enrollment or any time thereafter."**

(d) Reacquiring Membership Privileges. Any adult enrolled member who has lost membership privileges may reacquire all such privileges by maintaining residency in the Community for a period of five continuous years after the loss of membership privileges has occurred.

This subsection appears to conflict with Subsection 3(b). See comments for 3(b)(1) and (2) above.

As stated earlier, the proposed changes to Article III, Section 3 affect the voting rights of the members. Section 5 of Article VI-Elections, as amended on June 28, 1977, states "In order to acquire the right of franchise, a voter must qualify by having reached the age of 18 years or age or older, on the day of the election and be a member of the Community." According to this section of the Constitution, the right to vote in tribal elections is not based on residency. We suggest amending Article VI, Section 5 to correspond with the proposed language of Article III, Section 3. The Community may want to add the phrase "with full membership privileges" at the end of the sentence. Section 5 would then read:

Section 5. In order to acquire the right of franchise, a voter must qualify by having reached the age of 18 years of age or older, on the day of the election and be a member of the Community **with full membership privileges**.

This concludes our review and technical comments. Please notify us in writing whether or not the Tribal Council agrees with our suggestions.

Upon receipt of such notification, we shall issue an authorization letter for the call and conduct an election consistent with the Secretary's election regulations found in Title 25 of the Code of Federal Regulations, Part 81. However, such authorization does not carry with it the presumption of Secretarial approval should the amendments be adopted. If adopted, the amendments will not be effective until approved by the Regional Director.

If you have any questions or need further information regarding this matter, please contact De Springer, Tribal Operations Officer, at (612) 713-4400 ext. 1125.

Sincerely,

SIGNED/Claricy Smith

 ACTING Regional Director

cc: James Schoessler, Jacobson, Buffalo, Schoessler, & Magnuson, Ltd.
Field Solicitor, Twin Cities Field Office