

and the apparent difference of opinion on what constitutes a quorum and majority vote to conduct business when the Chairman has died and his position has not been filled. The Plaintiffs are asserting that the Lower Brule Constitution defines the quorum necessary to approve tribal business as 2/3's of the officers called for under the Constitution (6), while the Defendants seem to be of the opinion that in the absence of the Chairman, who died, a quorum would be 3 officers of the 5 remaining officers. This issue seemed critical to the resolution of the current impasse because the Defendants seem intent upon proceeding with tribal business, including declaring the Chairman's position vacant and filling it, based on its theory of the quorum while the Plaintiffs are resisting meeting with the Defendants based on their belief that the Constitution still requires a quorum of 4 even when one position is vacant due to death and that they do not want to participate in Council meetings under the Defendants' theory of the quorum.

The Court allowed the parties to brief the quorum and majority vote issue on or before June 24, 2015 and both sides submitted briefs and the Plaintiffs submitted a response brief. Because the Council is scheduled to meet on July 1, 2015 under the Constitution the Court is issuing this interim order pending further hearing on July 9, 2015.

The Lower Brule Sioux Tribal Constitution and its By-Laws govern the issue before the Court. The LB Constitution provides at Article III, §2 that the membership shall elect a Chairman, Vice-Chairman, Treasurer and three Councilpersons. Of those six elected officers, five shall constitute a quorum to conduct business. Bylaws, Art. IV, §2. The By-laws at Art. IV, Section 4, paragraph 4 provide that any motions or resolutions of the Council must be passed by a 2/3's majority vote of the "full" Tribal Council. The

Chairman under this by-law though is only given the right to vote in a tie, which must mean if only four elected leaders and the Chairman appear for a meeting or if the full Council meets and one councilperson abstains, then and only then would the Chairman have the authority to vote. However, this makes no sense because if the Chairman breaks a two-two tie the vote would be 3 to 2. However, that would not constitute a “majority vote” because it is not $2/3$'s of the full Council. If all Councilpersons appear for a meeting then the Tribal Chairman has no authority to vote, unless there are abstentions, yet the Tribal Chairman is counted in determining the “full” Tribal Council. It does not seem to make sense to include an elected officer who has no independent right to vote, except in a case of a tie, as part of the “full” Council in determining the $2/3$'s vote. The actual percentage that is required under the Plaintiff's theory of the vote is $4/5$'s because the Chairman has no vote except in a tie, but he cannot really break a tie because there could never be a tie at Lower Brule of 3-3.

On the other hand, however, use of the $2/3$'s majority vote language in the By-Laws strongly suggests that 4 is the magic number for the Tribal Council at Lower Brule to take action. This is because $3/5$'s is not equivalent to $2/3$ as $3/5$'s is $9/15$'s while $2/3$ would be $10/15$. Therefore even if the Court were to accept the Defendants' argument that the “full” Council, in light of the death of the Chairman, should be five Council members, a $2/3$'s majority vote would exceed $3/5$'s vote.

This Court cannot rewrite the Constitution and By-Laws of the Lower Brule Sioux Tribe, however, even in a case such as this where there seems to be an impasse in government caused by the death of the Chairman. The three Defendants wish to deal with the vacancy created by the Chairman's death and perform their constitutional duty under

Article V to declare the Chairman's position vacant and appoint a "qualified individual" to serve his term. The Plaintiffs appear to be resistant to this, either because they don't see a possible solution to the current 3-2 impasse or they distrust the majority of the remaining Council and their wisdom on appointing a new Chairman. There was even a suggestion near the end of the hearing that the 2/3's vote would apply to the act of declaring the Chairman's seat vacant. Certainly any elected official who refuses to vote yes on declaring the seat vacant would be violating Article V of the LB Constitution because that Article uses the term "shall", thus mandating that the remaining Councilpersons declare the office vacant.

Once that is done, however, this Court lacks the authority to direct any Tribal Councilperson to vote yes or no on a proposed replacement for the Chairman. This Court also rejects the Plaintiffs' suggestion that the Court resolve the impasse by ordering a special election to fill the Chairman's seat. This Court does not have that authority as the Constitution does not provide that a special election is the appropriate vehicle for filling the position. Whether the Council could use that alternative to appointment is a question for the Council to resolve.

So, short of amending the Constitution, which is not a viable option, this Court can only order the parties to this case to meet as required by the Constitution, to declare the Chairman's seat vacant, and then to proceed to appoint a tribal member who otherwise meets the Constitutional requirements to hold the Chairman's position. Four of the remaining Council must vote for the replacement so the Parties to this case must put aside their differences and perform their constitutional duties. There has to be a Lower

Brule member eligible to serve as Chairman whom four of the remaining elected leaders can agree upon.

WHEREFORE it is hereby

ORDERED, ADJUDGED, AND DECREED that the Parties to this case shall meet for their regularly-scheduled Tribal Council meeting, declare the Chairman's position vacant, and then proceed to perform their constitutional duties as required by Article V to fill the vacancy created by the Chairman's death by the votes of 4 remaining elected leaders. All other orders issued by this Court previously in this case shall remain in effect, except insofar as they are inconsistent with this order, including the potential for this Court to hold any party to this case in contempt for a willful and contumacious refusal to abide by this Court's orders. Further hearing shall continue to be held on the 9th day of July 2015 at 9 AM to resolve other issues remaining.

So ordered this 30th day of June 2015.



B.J. Jones
Lower Brule Sioux Tribe
Special Judge

ATTEST: _____