

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
ELECTION BOARD

2021 ELECTION CYCLE – CONSTITUTIONAL INTERPRETATION - NEPOTISM

As we approach the General Election on June 28, 2021, it has been brought to the Election Board’s attention that there are two candidates running for office who fall under the “immediate family” classification as defined by the Constitution in *Article III E*.

Pursuant to *Article XII I. Nepotism*, the Constitution bans *immediate family* members (“more than one”) from serving on the Tribal Council or as Chairperson or as Vice-Chairperson at the same time. The language is very clear and does not support any other interpretation than the literal one: No two or more family members may serve any of these offices simultaneously.

The Constitution provides for a solution in the event that two or more immediate family members are elected. The options are as follows:

- 1) They may designate in writing which one will serve.
- 2) If no willful designation occurs, only the family member with the highest number of votes shall serve. In case of a tie, and no designation is made, a run-off election shall be conducted.

FIRST INTERPRETATION CHALLENGE: DOES THE ELECTION BOARD HAVE THE AUTHORITY TO PROMPT THE DESIGNATION (OPTION 1), AND/OR SELECT THE CANDIDATE WHO OBTAINED THE LARGER AMOUNT OF VOTES, OR CALL FOR A RUN-OFF ELECTION IN CASE OF A TIE (OPTION 2).

The answer is Yes. Article XI of the Constitution established the Election Board as an independent agency charged with the duty to conduct all general and special elections. Article XII governs Elections, and between paragraphs A through I, it details several aspects of the Election process. Paragraph I, Nepotism is inserted within the Election Process, and it seems logical that enforcing the rules governing Nepotism is part of the Election Board mandate.

SECOND INTERPRETATION CHALLENGE: WHEN THE BAN MUST BE ENFORCED?

Either option presents different challenges when it comes to interpretations of the will of the Drafters of the Constitution. Before addressing those challenges the Election Board must determine when the constitutional ban must be enforced. Soon after the counting of the votes ends, and the Election Board issues the non-certified results; or, after the election results have been certified at the end of the statutory period to file challenges to the election results.

It is the position of the Election Board that the elected candidates who may be affected by the ban must make the required designation (Option 1); or, in absence of a designation by the elected candidates, the rule of majority of votes is applied, or in the event of a tie, the scheduling of a run-off election is made (Option 2), shall take place soon after the election results have been certified.

Doing it before the certification of the election results can be construed as a pre-certification, and an interference with the right of Tribal citizens to file challenges, which may ultimately affect the immediate relatives contest in conflict. The certification of the election, which provides legal certainty and finality to the election results, ends the election process.

Thus, upon certification of the election results, the Election Board shall state whether any of the certified elected candidates is subject to the Article XII I. ban. If so, it should advise these individuals that they have three days to notify the Election Board who will be the designated one who will serve the office he/she was elected for. The individual not designated will be immediately disqualified to serve.

If at the end of the three days there is not a designation, the Election Board will designate to serve the office the individual who obtained the larger number of votes, regardless of the office for which he/she was running. That individual will serve. The other (or others) will be disqualified to serve.

Upon the designation by the individuals involved in the conflict or the Election Board in case of lack of a willful designation, the Election Board will issue an Addendum to the certification of election results, stating the name of the individual who will serve.

In the event of a tie, and absent a willful designation, the Election Board will call to a run-off election between all candidates who are affected by the Article XII I ban. This election shall take place as soon as possible.

THIRD INTERPRETATION CHALLENGE: HOW THE VACANCY CREATED AFTER THE DESIGNATION OF ONE CANDIDATE AND THE DISQUALIFICATION OF THE OTHER(S) IS FILLED?

The text of the Constitution or the law does not provide an answer. Is it the candidate who obtained the greater amount of votes trailing the relative who relinquished his/her seat? What if there is a tie between two “runners-up”? Should there be a run-off election?

In the opinion of the Election Board the vacancy created upon the relinquishment of the elected candidate who is affected by the constitutional ban, shall be filled by the individual who obtained the most votes behind him or her. If there was more than one individual with the exact number of votes, a run-off election must take place between these two individuals. The Election Board may hold this run-off election simultaneously with the one required to choose the individual who will serve from the two or more affected by the Article XII I ban.

If the vacancy to be filled after a willful designation is that of Chair/Vice-Chair, only on this case the originally losing team would become the elected officials.

Based on the above interpretation, the Election Board believes the possible scenarios that may occur are as follows:

SCENARIO A: TWO OR MORE IMMEDIATE RELATIVES RUNNING FOR THE SAME OFFICE (TRIBAL COUNCIL)

If no willful designation takes place and the successful immediate relative candidates have run for the same office (Tribal Council) the decision is simple if there is a voting difference between the two or more of them. The candidate that received most votes shall be the one serving.

If there is a tie, the Election Board will call a run-off election between the two or more immediate relatives involved in the tie.

SCENARIO B: TWO OR MORE IMMEDIATE RELATIVES RUNNING FOR DIFFERENT OFFICES (CHAIR/VICE-CHAIR - TRIBAL COUNCIL)

The interpretation challenge is more difficult under this scenario. It seems that generally the candidate running for Chair or Vice-Chair will be the one receiving the larger number of votes. Simply, the universe of candidates is less populated for these offices and the candidates are only two (teams). Individual successful candidates for Tribal Council would generally obtain fewer votes than the successful candidate for Chair-Vice-Chair. For lack of other rule, the Constitutional mandate must be applied here.

While this rule seems simple enough, its application when dealing with immediate relatives who were successfully elected to the offices of Chair or Vice-Chair (within a team) and those immediate relatives elected to Tribal Council, when the Tribal Council candidate obtained more votes than the successful candidate for Chair or Vice Chair, the disqualification of the latter would affect a third party who is not covered by the constitutional ban.

However, in the situation of a tie between a candidate for Chair-Vice-Chair and another for Tribal Council, who are immediate relatives (even though the event of this occurring is highly unlikely, as noted above), the Constitutional rule would not work. There cannot be a run-off election to decide who serves. In this case, the Election Board will determine who will serve through the toss of a coin.

CONCLUSION

This is a complex matter that the Board believes ultimately shall be resolved by the courts or through constitutional amendments. In the meantime, the Election Board as the independent agency in charge of elections and its mandate to certify elections, adopts these interpretative statements of the Constitutional rule regarding Nepotism. Further, the interpretation herein in no way involves an amendment to any rules or regulations currently in effect.

Election Board Approved by Motion on June 16, 2021

Andrea Pierce, Vice-Chairperson

Jon Shawa, Treasurer

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