

ORIGINAL



THE SUPREME COURT OF THE LUMBEE TRIBE OF NORTH CAROLINA

Chief Justice Von D. Locklear
Justice Wendell Lowery
Justice Matthew C. Scott

Justice Tina Dicke
Justice Francine Chavis

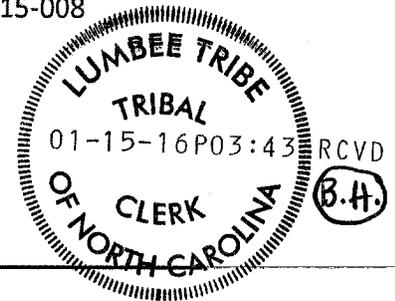
Larry Townsend, Petitioner

Case No.: 2015-008

VS

Decision

Lesandri Hunt, Tribal Speaker, Anita Blanks, Councilwoman
and Lumbee Tribal Council, Respondents



Now comes this matter before the Supreme Court of the Lumbee Tribe of North Carolina pursuant to petition filed on October 30, 2015, by Larry Townsend, hereinafter referred to as Petitioner against Lesandri Hunt in his capacity as Speaker, Anita Blanks in her capacity as Tribal Councilwoman, and the Lumbee Tribal Council, hereinafter referred to as Respondents.

A hearing was held on this matter on December 28, 2015, at 6:30 pm at the Lumbee Tribe of North Carolina's Tribal Complex building. Present on behalf of the Supreme Court were Justices Von Locklear, Matthew Scott, Tina Dicke and Francine Chavis. Present for the Petitioner were - Petitioner, Petitioner's witnesses Councilman Terry Hunt, Councilwoman Areatha Patterson, Councilman Jared Lowery, Councilman Bill James Brewington, and Councilman William Maiden. Present for the Respondents were Speaker Lesandri Hunt, Councilwoman Anita Blanks, Councilwoman Janie McFarland, Councilman William Maiden, and Councilman Bobby Oxendine.

Petitioner alleges his constitutional rights were violated and he was unjustly sanctioned from performing his duties as a Tribal Council Representative. Specifically, pursuant to Tribal Council Resolution CLLR-2014-1216-01 Petitioner was charged with a violation of the Ethics and Conflict of Interest Ordinance, CLLO 2010-0312-01. The resolution found that a conflict of interest exists in this matter requiring the Petitioner to recuse himself from any decision or vote affecting his pecuniary interest or a family member. The Resolution went further to state pursuant to the Ordinance in Section Six (6) that sanctions may be imposed. Tribal Council then imposed sanctions "To prohibit the person

(Larry Townsend) from holding any further committee or assignments of office or authority; [and] to require Larry Townsend to recuse himself from discussions and voting on the Lumbee Tribal Budget". See. CLLR-2014-1216-01.

Having and adhering to an ethics ordinance should be the utmost importance to any government. Failure to do so breeds distrust with the people the government has the responsibility to serve. It should not be lost on any councilmember that they are first and foremost a servant. Even the appearance of a conflict of interest and thus a violation of ethics breeds the belief that the councilmember is not a servant but an opportunist only out for personal gain.

In determining whether Mr. Townsend violated the Tribes Ethics Ordinance we must first look at the Constitution. The Tribal Constitution, Article XI states;

The first Tribal Council elected under this Constitution shall adopt an ordinance proscribing conflicts of interests in the performance of duties by elected and appointed tribal officials, which ordinance shall require a tribal official to recuse him or herself from any decision or vote affecting his or her pecuniary interest or a family member.

From this Constitutional mandate the Council, thru further amendments, has a codified Ethics and Conflict of Interest Ordinance referenced as CLLO-2010-0312-01. Section 2 of that ordinance states "A person as identified in Section 1 must not exercise an official power or perform an official duty or function if the person has a conflict of interest or an apparent conflict of interest." Section 1 references the individuals who fall within the ordinance. These individuals are the Tribal Chairperson, Council member, officer, appointee, employee or any person or entity that provides contractual services. The ordinance defines a conflict of interest as when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private and/or personal interest. The ordinance defines an apparent conflict of interest as if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been (or can be) affected by his or her private and/or personal interest.

The ordinance further proscribes in Section 4 the process on how to judge a conflict of interest. This section separately defines a conflict of interest by stating that a conflict exists if there is substantial interest by the person or entity identified in Section 1. In judging whether there is a substantial interest the ordinance seems to be silent on the possibility of a spouse working for the tribe and only discusses situations where the

person or persons, spouse, or dependent child has an interest, whether thru ownership or employment with an entity that does business with the Tribe.

While the Ordinance does define what a conflict of interest is, it is not as clear as the Constitutional mandate. For example, the ordinance does not even use the phrase pecuniary interest, much less define it. Also, the Ordinance does not define the term family member. This term can be defined a number of different ways¹. While there are provisions of the ethics ordinance that are helpful and insightful in giving guidance as to the process to handle a conflict of interest and the sanctions that shall be imposed if a conflict is shown, it does not adequately address the one issue the constitution mandates. Because of the lack of addressing the definitions of pecuniary gain and family member, the Council has created a void to which a number of Council members have been violating, at a minimum, the spirit of Article XI of the Constitution.

The Court heard arguments by the Petitioner and Respondents in this matter and listened to the testimony given. Petitioner argued he never violated the Ethics Ordinance because he had not voted on any matter related to his wife's work as head of the Tribe's Boys & Girls Club. Respondents agreed with the Petitioner that he had indeed not voted on the budget and therefore had not voted on any matter related to his wife's position within the Tribal Administration. In addition, there was no evidence presented that indicated that the Petitioner had any part in the hiring of his wife by the administration. The Respondents stated that they sanctioned the Petitioner based on their belief that he would not recuse himself from acting or voting on issues related to his wife's department. While the Council may or may not have been accurate in their determination that the Petitioner would not have recused himself from issues related to his wife, the problem is this belief is an assumption. The Council preemptively sanctioned the Petitioner before he had violated the constitution or the tribal ordinance. Therefore, the Council's actions in sanctioning the Petitioner were premature. It is clear based on the plain reading of Article XI of the constitution, if the Petitioner had indeed voted on the budget to which his wife was to receive a pecuniary gain, he would have been in violation of the Tribal

¹ As an example, North Carolina Statute 138A defines an immediate family member as an unemancipated child of the covered person residing in the household and the covered parties spouse, if not legally separated. A member of a covered person's extended family shall also be considered a member of the immediate family if actually residing in the covered person's household. If the Council adopted this definition of a family member it would cover a child of the Council member living in the home but not a sibling of the Council member unless that sibling lived in the home of the Council member.

Constitution. It is clear that a spouse living under the same roof of a council member would be covered under the definition of family member within Article XI.²

During the testimony of the witnesses at the hearing, issues were brought before the court that were more distressing and alarming than the Petitioner's case itself. Testimony was brought to light that approximately 8 Council members have close relatives that work for the administration and those council members had, unlike the Petitioner, voted on budgets that fund the salaries of those family members. Also, and even more shocking, was testimony that approximately 6 Council members have voted on budgets to which they ultimately receive money thru contracts awarded by the administration and funded through that same budget. Clearly, this later example is in violation of Article XI of the Constitution. It should be obvious that if you are voting on a budget to which you know or have reason to believe that you will personally receive money from that budget, you are in violation of the Constitution. The proper way to handle these issues if they arise is to recuse oneself. The Ethics Ordinance describes in detail the process to follow when a conflict of interest is identified.

The Court is at a loss of words as to why this process was not followed. These actions bring upon distrust and a lack of faith in the governing body of the Tribe and should not be tolerated. The Court strongly suggests that the Council define clearly in the Ethics Ordinance the definition of a family member.³ Also, we strongly suggest that the Ethics Committee look into the allegation that Council members are personally receiving funds from the budgets that they are voting on. Again, there is a process within the already codified Ethics Ordinance on how to investigate and discipline those individuals who are in violation of said Ordinance. The Council used this process in investigating and sanctioning the Petitioner. In doing so, it has brought to light what appears to be numerous egregious ethical violations among several Council members. It is now the council's duty to clean up its house and shine a light on what appears to be rampant ethics violations.

It is the unanimous decision of this Court, based upon the evidence presented and testimony received, that the Petitioner did not and has not violated Tribal Ethics Ordinance CLLO 2010-0312-01 and therefore the sanctions imposed upon him by Tribal Council Resolution CLLR-2014-1216-01 were imposed unjustly and are therefore null and

²It is also clear that a child or family member who lives under the same roof as a council member shall fall under the definition of family member within Article XI.

³ The court has provided two examples within this opinion that it believes falls within the definition of family member contained within Article XI of the Constitution. If the counsel feels that these examples are not expansive enough then the Council has the power to expand the definition as it deems fit.

void. It is further ordered that all rights of Petitioner Larry Townsend as a Tribal Council Member should be reinstated, particularly those imposed by said sanctions. The Court cautions the Petitioner to adhere to the process of recusing oneself from decisions or votes that affect the pecuniary gain of a family member as mandated by the Constitution and codified in the Ethics and Conflict of Interest Ordinance.

Signed this the 15th day of January, 2016.

Original signed

Chief Justice Von D. Locklear

Original signed

Justice Tina Dicke

Original signed

Justice Francine Chavis

Original signed

Justice Matthew Scott