



Office of the Tribal Attorney

St. Croix Chippewa Indians of Wisconsin

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October 8, 2008

The Honorable Jeffrey Mursau, Representative
Wisconsin State Assembly
Room 18 North, State Capitol
Madison, Wisconsin 53708

Dear Rep. Mursau,

In response to your letter dated September 18, 2008 the St. Croix Chippewa Indians of Wisconsin (the "Tribe") offer the enclosed suggestions concerning issues we would like to see the State Tribal Relations Committee consider as potential legislative bills to be introduced in the 2009-2010 legislative session.

There is a conflict in the mutual aid statute some local officials are using to deny Native American police departments from participating in the mutual aid program. Legislative Council staff is aware of the language in the statute which creates the problem. The issue arose too late last session to introduce the necessary bill to correct the problem. Attorney General Van Hollen recently issued an opinion on October 1, 2008 (a copy of opinion is attached) relegating tribal police officers to their respective reservations without cross-deputize status with local sheriffs. The Tribe has reservation and trust land holdings scattered throughout Barron, Burnett, and Polk counties and have relied on the mutual aid so that Tribal police officers may respond to calls between the various reservation communities, on top of assisting local sheriffs with calls. The Tribal Police Department is the only law enforcement department in Burnett County with dogs trained in drug interdiction and have been called upon by the County and local State Police Troops for assistance. The Burnett County Sheriff, and other local law enforcement, have effectively lost these valuable resources.

Many of the eleven Wisconsin tribes are interested in organizing charter schools. The statutes dealing with the establishing these schools is such that it is almost impossible to get the necessary agreements from the local school boards to do so. It is important that the road blocks be removed.

Rep. Mursau
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Currently the Tribe is not eligible to apply for various Department of Commerce grants. We are seeking a clarification of not only the criteria for these important economic development tools, but a remedy.

Present law provides limited protection for Native American burial sites. The statute needs to be changed to require that each identified burial site be surveyed and a notice be attached to the property deed. This issue is of particular importance in rural Wisconsin where larger tracts of land are bought and sold. Under present law a buyer could purchase a parcel of land with no knowledge of an identified Native American burial site on the parcel. The recent destruction of an identified site by a contractor at Lake Nakomis would not have happened if the buyer of the house under construction or his lender had deed notice.

These items are some of the many issues the committee could consider. We look forward to meeting with you to discuss these and some of the other items important to the St. Croix Chippewa Indians of Wisconsin for inclusion in your committee deliberations.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Adams III". The signature is fluid and cursive, with a horizontal line extending to the right from the end of the name.

Andrew Adams III
General Counsel

Cc: Joyce Kiel
Wisconsin Joint Legislative Council
Post Office Box 2536
Madison, WI 53701

David Lovel
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STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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October 1, 2008

OAG—8—08

Mr. Thomas D. Wiensch
Assistant Corporation Counsel
Oneida County
Post Office Box 400
Rhinelander, WI 54501-0400

Dear Mr. Wiensch:

You have submitted a letter and enclosures requesting my opinion on several questions related to mutual assistance requests between a law enforcement agency operated by a Wisconsin Indian tribe and a law enforcement agency operated by the State of Wisconsin or a political subdivision of the state.

According to the materials that have been submitted, on September 18, 2006, you sent a memorandum to the Oneida County Sheriff's Department expressing the view that tribal law enforcement agencies are not included within the coverage of Wis. Stat. § 66.0313, which governs mutual assistance requests among law enforcement agencies. On January 9, 2007, attorney Barry LeSieur of the Lac du Flambeau Band of Lake Superior Chippewa Indians ("Band") sent you a letter expressing the view that tribal law enforcement agencies are covered by Wis. Stat. § 66.0313. A copy of that letter was also sent to my office, with a request for an opinion on the disputed question. You replied to attorney Barry LeSieur's letter on January 28, 2008, and raised several additional issues. You also sent a copy of that letter to my office, with a request for an opinion on the various issues under discussion. Finally, you confirmed that opinion request in your letter to me of February 20, 2008.

The first and main question to be considered is whether tribal law enforcement agencies are included within the coverage of Wis. Stat. § 66.0313. That statute provides as follows:

Law enforcement; mutual assistance. (1) In this section, "law enforcement agency" has the meaning given in s. 165.83(1)(b).

(2) Upon the request of any law enforcement agency, including county law enforcement agencies as provided in s. 59.28(2), the law enforcement personnel of any other law enforcement agency may assist the requesting agency within the latter's jurisdiction, notwithstanding any other jurisdictional provision. For purposes of ss. 895.35 and 895.46, law enforcement personnel, while acting in response to a request for assistance, shall be deemed employees of the requesting agency.

(3) The provisions of s. 66.0513 apply to this section.

Wis. Stat. § 66.0313. In addition, Wis. Stat. § 165.83(1)(b), which is incorporated by reference in the above statute, defines a “[l]aw enforcement agency” as “a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.”

The language of the above provisions, when construed together, compels the conclusion that a tribal law enforcement agency is not a “law enforcement agency” for mutual assistance purposes under Wis. Stat. § 66.0313. An Indian tribe is neither a state nor a political subdivision of a state. See *Nevada v. Hicks*, 533 U.S. 353, 383-84 (2001) (quoting F. Cohen, Handbook of Federal Indian Law 664-65 (1982)) (“Indian tribes are not states of the union within the meaning of the Constitution . . .”); *Merrion v. Jarcarilla Apache Tribe*, 455 U.S. 130, 189 (1982) (distinguishing Indian tribes from states and their subdivisions); *Oklahoma Tax Com’n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 509 (1991) (“Indian tribes are ‘domestic dependent nations’ that exercise inherent sovereign authority over their members and territories.”). Accordingly, a tribal law enforcement agency is not an agency of “the state or a political subdivision of the state” within the meaning of Wis. Stat. § 165.83(1)(b) and thus cannot be deemed a “law enforcement agency” for purposes of Wis. Stat. § 66.0313.

This conclusion is reinforced by the fact that subsection (1)(e) of Wis. Stat. § 165.83 contains an express definition of a “[t]ribal law enforcement agency” that is separate from the definition of “[l]aw enforcement agency” in subsection (1)(b) of the same statute. The existence of that separate definition shows conclusively that tribal law enforcement agencies were not intended to be implicitly included within the definition of “[l]aw enforcement agency” in Wis. Stat. § 165.83(1)(b). When the Legislature, in 1999 Wisconsin Act 150, sec. 81, expressly incorporated the definition of “[l]aw enforcement agency” from Wis. Stat. § 165.83(1)(b) into Wis. Stat. § 66.0313, it did not similarly incorporate the existing, separate definition of “[t]ribal law enforcement agency” from Wis. Stat. § 165.83(1)(e). This provides compelling evidence that the Legislature did not intend for a tribal law enforcement agency to be considered a “law enforcement agency” for mutual assistance purposes under Wis. Stat. § 66.0313.

In contrast to the above view, the Band’s attorney has taken the position that Wis. Stat. § 66.0313 does apply to tribal law enforcement agencies whose officers exercise state law enforcement powers on their reservations pursuant to Wis. Stat. § 165.92(2)(a) and (b). Under the latter statute, a tribal law enforcement officer who meets the state’s certification requirements for law enforcement officers under Wis. Stat. § 165.85(4)(b)1., (bn)1., and (c) “shall have the same powers to enforce the laws of the state and to make arrests for violations of such laws that

sheriffs have, including powers granted to sheriffs under ss. 59.27 and 59.28 and under the common law[.]” Wis. Stat. § 165.92(2)(a). Wisconsin Stat. § 59.28, in turn, provides as follows:

Peace maintenance; powers and duties of peace officers, cooperation.

(1) Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties and quiet and suppress all affrays, routs, riots, unlawful assemblies and insurrections; for which purpose, and for the service of processes in civil or criminal cases and in the apprehending or securing any person for felony or breach of the peace they and every coroner and constable may call to their aid such persons or power of their county as they consider necessary.

(2) County law enforcement agencies may request the assistance of law enforcement personnel or may assist other law enforcement agencies as provided in ss. 66.0313 and 66.0513.

Wis. Stat. § 59.28. According to the Band’s attorney, the power under Wis. Stat. § 59.28(2) to assist or request assistance from another law enforcement agency as provided in Wis. Stat. § 66.0313 is thus included in the powers that are granted to a qualified tribal law enforcement officer under Wis. Stat. § 165.92(2)(a).

I respectfully disagree with that conclusion. Wisconsin Stat. § 66.0313 purports to authorize a “law enforcement agency,” within the meaning of that statute, to act outside the boundaries of its usual territorial jurisdiction when responding to a request for assistance from another law enforcement agency. In contrast, the powers granted to qualified tribal law enforcement officers under Wis. Stat. § 165.92(2)(a) are expressly limited to being exercised “only on the reservation of the tribe or on trust lands held for the tribe or for a member of the tribe that employs the officer.” Wis. Stat. § 165.92(2)(b). The grant of power under Wis. Stat. § 165.92(2)(a) and (b) thus is not broad enough to allow a tribal law enforcement agency to assist a non-tribal law enforcement agency within the latter’s territory, as contemplated by Wis. Stat. § 66.0313. It follows that the Legislature cannot have intended Wis. Stat. § 66.0313 to apply to a tribal law enforcement agency—even when that tribal agency is empowered to act pursuant to Wis. Stat. § 165.92(2)(a) and (b).

Furthermore, it would be contradictory to maintain that tribal law enforcement officers have the power to assist or request assistance from another law enforcement agency as provided in Wis. Stat. § 66.0313 when, as already shown, tribal law enforcement agencies have been specifically omitted from the definition of “law enforcement agency” that the Legislature chose to use in Wis. Stat. § 66.0313. It is a well-established principle of statutory construction that, where one statute deals with a subject in general terms and another statute deals with a part of the same subject in a more specific way, the two statutes should be harmonized, if possible, and if there is any conflict between them, the more specific statute will prevail. *State v. Amato*,

Mr. Thomas D. Wiensch

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126 Wis. 2d 212, 217, 375 N.W.2d 75 (Ct. App. 1985) (citing 2A Sutherland, *Statutory Construction* § 51.05 (4th ed. 1973)). Applying that principle here, the more specific definition of "law enforcement agency" for purposes of mutual assistance in Wis. Stat. § 66.0313 must prevail over the more general grant of law enforcement and arrest powers to tribal law enforcement officers in Wis. Stat. § 165.92(2)(a).

Likewise, the language of Wis. Stat. § 59.28(2) only purports to give county law enforcement agencies the power to assist or request assistance "as provided in" Wis. Stat. § 66.0313. In other words, Wis. Stat. § 59.28(2) cannot be read as granting any power that is not contained in Wis. Stat. § 66.0313. It follows, once again, that any potential conflict must be resolved in favor of Wis. Stat. § 66.0313 which, for the reasons already given, does not apply to tribal law enforcement agencies.

For all of the above reasons, it is my opinion that tribal law enforcement agencies are not included within the coverage of Wis. Stat. § 66.0313.

The second issue raised in your letter is whether there is any tension between the various statutes discussed above and Wis. Stat. § 165.90, which provides for written agreements establishing cooperative law enforcement programs between tribal and county law enforcement agencies. I see no such tension. There is nothing in the language of Wis. Stat. § 165.90 that would preclude a county and a tribe that has a reservation located wholly or partially within that county from including terms related to mutual assistance requests in a written agreement under that statute. More generally, Wis. Stat. § 66.0301, allows any municipality in the state (including a county) to "contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law." Wis. Stat. § 66.0301(2).

The permissible terms of such an intergovernmental agreement are limited, however, by the statutory provision that "[i]f municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties." *Id.* In other words, an intergovernmental agreement between a tribe and a Wisconsin municipality cannot authorize a tribal or municipal agency to act outside the limits of its usual jurisdiction. In my opinion, the same jurisdictional principle would apply to agreements establishing tribal-county law enforcement programs under Wis. Stat. § 165.90. Accordingly, in any intergovernmental agreement entered under either Wis. Stat. §§ 66.0301 or 165.90, tribal and county law enforcement agencies could agree to provide mutual assistance only in circumstances in which the assisting law enforcement officers would have legal authority to act deriving from some source other than the intergovernmental agreement itself.

For example, Public Law No. 280, 67 Stat. 588-89 (1953), codified at 18 U.S.C. § 1162 and 28 U.S.C. § 1360, allows Wisconsin law enforcement agencies (including county and other municipal agencies) to exercise jurisdiction over all crimes committed in Indian country within

this state (except the Menominee reservation). 18 U.S.C. § 1162(a); *State v. Webster*, 114 Wis. 2d 418, 436-37, 338 N.W.2d 474 (1983). Accordingly, county law enforcement officers in Wisconsin have jurisdiction to assist tribal law enforcement officers with criminal law matters in reservation territory located within their own county. In addition, Wis. Stat. § 175.40 authorizes any peace officer to act anywhere in the state under the specific, limited circumstances enumerated in that statute—e.g., when in fresh pursuit, on border highways, and when responding to certain dangerous emergency situations or a felony in progress.

Tribal law enforcement officers do not have an equally broad grant of jurisdiction to act outside tribal territory. As previously noted, Wis. Stat. § 165.92 generally authorizes qualified tribal officers to exercise state law enforcement powers only within their reservation. A tribal officer who is empowered to act under Wis. Stat. § 165.92, however, is a "peace officer" within the meaning of Wis. Stat. § 175.40 and thus may act outside his or her reservation under the specific, limited circumstances enumerated in that statute. See Wis. Stat. § 175.40(1)(c). In addition, sheriffs may call to their aid such persons or powers of their respective counties as they consider necessary for the purpose of preserving the peace therein. Wis. Stat. § 59.28(1). Sheriffs also have statutory authority to appoint deputies, consistent with any other applicable legal requirements. See Wis. Stat. § 59.26(1)-(2). Accordingly, a sheriff could, in appropriate circumstances, call for the aid of tribal officers within the county or cross-deputize tribal officers, thereby vesting them with county jurisdiction.

The third issue raised in your letter is whether the provision of assistance under Wis. Stat. § 59.28 is mandatory. The repeated use of the word "may" in Wis. Stat. § 59.28(2) indicates that decisions to request or provide law enforcement assistance under that statute are discretionary, and not mandatory, in nature. As noted in response to your first question, however, it is my opinion that the mutual assistance power granted to county law enforcement agencies by Wis. Stat. § 59.28(2) is not one of the powers conferred upon tribal law enforcement officers under Wis. Stat. § 165.92(2)(a). This does not mean that tribal law enforcement officers never have the power to provide assistance to county officers, but it does mean, as already noted, that such assistance may be provided only in circumstances in which the assisting tribal officers have legal authority to act derived from some source in addition to the county's request for assistance itself. Tribal and county agencies with a history of cooperating consistent with their respective jurisdictions are encouraged to continue their established practices. I am unaware of any provision of law, however, that would make county-tribal mutual assistance legally mandatory.

The fourth issue raised in your letter is whether, if Wis. Stat. § 66.0313 does not apply to tribal law enforcement agencies, there are other means for county and tribal law enforcement agencies to engage in mutual assistance, either by establishing a county-tribal law enforcement program under Wis. Stat. § 165.90 or in some other way. As I have already discussed in response to the second issue above, an intergovernmental agreement under Wis. Stat. § 66.0301 or a county-tribal cooperative law enforcement agreement under Wis. Stat. § 165.90 may include provisions for mutual assistance in circumstances in which the assisting law enforcement officers

Mr. Thomas D. Wiensch

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have legal authority to act deriving from some source other than the agreement itself—*e.g.*, state officers acting pursuant to Public Law No. 280 or state or tribal officers acting pursuant to Wis. Stat. § 175.40 or to a call for assistance or cross-deputization by a sheriff.

The fifth issue raised in your letter is whether the provisions in Wis. Stat. § 66.0313 related to the payment of defense costs or judgments against a law enforcement officer under Wis. Stat. §§ 895.35 and 895.46 also apply to tribal law enforcement agencies and their officers. The answer given above to your first question requires that this question be answered in the negative. Because Wis. Stat. § 66.0313 does not apply to tribal law enforcement agencies, it follows that the portions of that statute dealing with the payment of defense costs or judgments under Wis. Stat. §§ 895.35 and 895.46 also do not apply to those agencies.

In addition, the plain language of Wis. Stat. § 895.35(1) itself expressly applies only to officers of a city, town, village, school district, or county. Likewise, the plain language of Wis. Stat. § 895.46(1) applies only to public officers or employees of “the state or [a] political subdivision [of the state].” Tribal law enforcement officers, as such, are not officers of a city, town, village, school district, or county. Nor are they officers or employees of the state or a political subdivision of the state. By their own terms, therefore, Wis. Stat. §§ 895.35 and 895.46 do not apply to tribal law enforcement agencies and their officers. Accordingly, it would be advisable for any mutual assistance agreement between tribal and non-tribal law enforcement agencies to include provisions expressly addressing the payment of defense costs or judgments against tribal and non-tribal law enforcement officers who act pursuant to that agreement.

The sixth issue raised in your letter is whether Public Law No. 280 gives a county sheriff in Wisconsin the power to enforce county and municipal ordinances, in addition to state statutes, on a tribal reservation. It is unclear whether you are asking only about criminal law enforcement jurisdiction, which is governed by 18 U.S.C. § 1162, or whether you are also asking about civil jurisdiction, which is governed by 28 U.S.C. § 1360. Such a request should ordinarily include relevant facts on which a legal analysis may rest. More generally, questions submitted to the Attorney General’s Office from district attorneys or county corporation counsel should include the requester’s own conclusion on the question presented and should set forth the reasoning upon which that conclusion is based, including an analysis of all relevant authorities that support or oppose that conclusion. *See* 77 Op. Att’y Gen. Preface (1988). Absent relevant facts and your

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preliminary analysis and conclusions, I cannot address this issue but will be happy to do so should this information be part of a follow-up request.

Sincerely,

A handwritten signature in cursive script, appearing to read "J.B. Van Hollen".

J.B. Van Hollen
Attorney General

JBVH:TCB:rk

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FAXED

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6 pages P.m.
mmg

January 28, 2008

Barry LeSieur
Tribal Attorney
P. O. Box 777
Lac du Flambeau, WI 54538

VIA FACSIMILE: (715)588-7295

RE: Interpretation of Wisconsin Mutual Aid Statute Sec. 66.0313 Wis. Stats.

Dear Attorney LeSieur:

Thank you for your letter of January 9, 2008. I appreciate you providing me with a summary of the research that you have conducted. I also appreciate that you have taken the time to request an opinion of the Attorney General on this important issue. I think an Attorney General's opinion will be very valuable in answering the questions at hand.

I agree that, under Wis. Stat. Sec. 165.92(2)(a), a tribal law enforcement officer meeting the requirements of Sec. 165.84(4)(b)1, (b) 1. and (c) seems to be vested with the powers of a sheriff including the ability to request assistance under Sec. 59.28(2). The interplay of this statute with a number of other statutes, however, leaves me uncertain whether your interpretation is correct. In my opinion the following issues remain:

1. I believe there is some tension between the above statutes and Wis. Stats. Sec. 165.90 which seems to provide for a written agreement between tribal and non-tribal law enforcement officers for cooperation and assistance.
2. It would seem to me that a provision of assistance under Sec. 59.28 is not mandatory. Despite that, it is my understanding after speaking with Chief Deputy John Sweeney that the County and the Tribe have a strong history of cooperation which both parties intend to continue.
3. It is unclear whether, absent an agreement under Sec. 165.90, there would be means for a county law enforcement agency to seek the assistance of a tribal agency.

4. As my memo to Officer Wood pointed out, Wis. Stats. Sec. 66.0313 indicates that for the purposes of Sec. 895.35 and Sec. 895.46, officers who assist are deemed to be employees of the requesting agency. Sec. 895.35 requires the representing municipalities to pay costs in certain situations if proceedings are brought against officers and the officers are exonerated. Wis. Stats. Sec. 895.46 requires that municipalities pay certain judgments against officers. Given the fact that the Lac du Flambeau Band of Lake Superior Chippewa Indians is not a municipal subdivision, but a sovereign entity, it's unclear to me whether and how these statutes would be applied. For instance, if our officers responded to a request for assistance, and proceedings were brought or liability were established, would the Lac du Flambeau Band of Lake Superior Chippewa Indians, given tribal sovereignty, be required to pay judgments and costs, and, if not, would those officers and/or our agency face exposure. It would seem to me that issues of this nature might properly be dealt with in an agreement under Wis. Stats. Sec. 165.90.
5. What are the limits, if any, of the ability of the Oneida County Sheriff's Department to enforce criminal and other laws on the portion of the Lac du Flambeau reservation which is within Oneida County, both on tribal property in said part of the reservation and otherwise. As you know, Wisconsin is a Public Law 280 State, which allows county law enforcement officers to enforce state laws on the portion of the reservation within Oneida County. It is not entirely clear to me, however, whether the sheriff's office can enforce municipal and county laws, including ordinances which adopt state statutes (such as non-criminal disorderly conduct).

I have received and reviewed a copy of Resolution No. 58 (95) of the Lac du Flambeau band. A copy is attached for your convenient reference. I am told that this may represent, in part, an attempt to waive sovereign immunity with regard to the mutual aid statutes. Given the plain language of the Resolution, it would seem to me that the waiver would be effective only as to liability under Wis. Stats. Sec. 165.92(3), which imposes liability for a tribal officer on the tribe rather than political subdivisions of the state. This section does not seem to deal in any way with liabilities under Sec. 895.35, 895.46, or any other liabilities relating to officers of political subdivisions of the state assisting tribal officers. Please let me know if you believe the above resolution constitutes a waiver of sovereignty with regard to mutual assistance (either as described in Sec. 895.35 or 895.36 or otherwise).

Additionally, if another resolution exists which may have waived sovereign immunity concerning mutual aid, please let me know. Finally, I would appreciate it if you could provide me with the authority (both in federal law and in tribal law, which sets out the procedure for a waiver of sovereign immunity). I checked the tribal constitution, etc. on your web-site and have not yet located anything in that regard.

By copy of this letter, I am providing a copy of my memo to Lieutenant Wood dated September 18, 2006, and a copy of Resolution No. 58(95), to the Attorney General's office with the request that they address the above issues, either in the opinion they prepare for you or in a separate opinion.

Thanks again for requesting an Attorney General's opinion in this situation. I think that will be very helpful. I look forward to working with you in an effort to resolve this matter.

Sincerely,

Thomas D. Wiensch
Assistant Corporation Counsel
State Bar No.: 1018958
Telephone No.: (715)369-7824

TDW/mak

Enclosures:

1. 9/18/06 Memo to Lt. Jim Wood
2. Resolution No. 58 (95)

cc: Wisconsin Attorney General's Office ✓
Jeff Hoffman, Sheriff
John M. Sweeney, Chief Deputy
Andy Smith, County Board Chairman
Martha Milanowski, Vilas County Corp. Counsel
- all w/enc.

P.S. To the Attorney General's Office:

Please let us know if the Attorney General's can address the above issues without receiving a separate formal request from Oneida County. Please also let us know if you can provide us with a copy of the opinion that you issue.

Thank you.



**Barry LeSieur
Tribal Attorney**

DIRECT LINE: 715.588.4281
FACSIMILE: 715.588.7295

9 January 2007

Thomas Wiensch
Oneida County Corporation Counsel
Post Office Box 400
Rhinelander, WI 54501-0400

RE: Interpretation of Wisconsin Mutual Aid Statute § 66.0313 Wis. Stats.

Dear Assistant Corporation Counsel Wiensch:

I am writing in regard to your opinion provided to Lt. Jim Wood, Oneida County Sheriff's Department, [Exhibit A] concluding that tribal law enforcement agencies are not included within the mutual assistance statute (§ 66.0313 Wis. Stats.). The Lac du Flambeau Band of Lake Superior Chippewa is of the opinion that tribal law enforcement agencies are included within the mutual assistance statute based upon the following statutory interpretation:

§ 165.92(2)(a). A tribal law enforcement officer who meets the requirements of § 165.84(4)(b)1., (bn) 1. and (c) shall have the same powers to enforce the laws of the state, and to make arrests for violations of such laws that sheriff's have, including power granted to sheriff's under §§ 59.27 and 59.28 and under the common law, and shall perform the duties accepted under § 165.85(3)c. [Emphasis added.]

§ 59.28(2). County law enforcement agencies may request the assistance of law enforcement personnel or may assist other law enforcement agencies as provided in §§ 66.0313 and 66.0513. [Emphasis added.]

In summary, under § 165.92(2)(a) tribal law enforcement officers have the same powers that sheriff's have, including the power granted to sheriff's under § 59.28. Where under § 59.28(2) county law enforcement may request assistance of law enforcement personnel or may assist other law enforcement

**Lac du Flambeau Band
of Lake Superior Chippewa Indians**

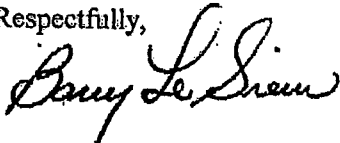
P.O. Box 777 • Lac du Flambeau, Wisconsin 54538 • (715) 588-2072 • FAX# (715) 588-2073

agencies as provided in § 66.0313. That is, under § 165.92(2)(a) tribal law enforcement officers (under the authority of § 59.28) to the same extent as county law enforcement may request assistance of law enforcement personnel or may assist other law enforcement agencies as provided in § 66.0313. Therefore, tribal law enforcement officers fall within the mutual assistance provisions of § 66.0313.

Based upon your opinion, Oneida County law enforcement, as well as other law enforcement agencies, have refused or been reluctant to respond to requests for assistance from the Lac du Flambeau Band of Lake Superior Chippewa Police Department. Your opinion has created uncertainty as to whether the Lac du Flambeau Band of Lake Superior Chippewa Police Department can rely on surrounding law enforcement personnel to respond to requests for assistance which in turn may leave Lac du Flambeau Band of Lake Superior Chippewa police officers without assistance in dangerous situations.

The Lac du Flambeau Band of Lake Superior Chippewa believes this matter is of such importance to warrant an opinion from the Wisconsin Attorney General's Office, and is requesting such an opinion by forwarding a copy of this letter to the Wisconsin Attorney General's Office.

Respectfully,



Barry LeSieur
Tribal Attorney

enclosures: Attachment A
cc w/encl: Victoria A. Doud, Tribal President
Elliot Rising Sun, LDF Police Chief
Wisconsin Attorney General's Office