



SUPREME COURT OF THE LUMBEE TRIBE

Mr. Jimmy Goins
Chairman Lumbee Tribe of North Carolina
Petitioner,

Vs.

Case No. 2005-011

Tribal Council
Respondent,

Argued: August 11, 2005
August 16, 2005
August 22, 2005

Petitioner represented by Tribal Chairman Jimmy Goins and
Tribal Administrator Leon Jacobs

Respondent represented by Tribal Council Member Linda Hammonds and
Tribal Council Member Welford Clark

JUSTICE ANTHONY BLANKS DELIVERS THE OPINION OF THE COURT AS FOLLOWS:

This matter before the court is a petition filed by the Lumbee Tribal
Chairman Mr. Jimmy Goins.

The petition states that on June 16, the Tribal Council passed an Ethics and
Conflict of Interest Ordinance, hereinafter referred to as the "Ordinance",
over a veto by Tribal Chairman Jimmy Goins. Chairman Goins was concerned
that the ordinance violated the Constitution of the Lumbee Tribe of North
Carolina, hereinafter referred to as the "Constitution".

Mr. Goins, appearing before the court argued the following:

1. The Ordinance should not apply to the employees of the Tribe,
pursuant to the preamble of the Ordinance and Article VII Section 2 of the
Constitution. Mr. Goins argued that tribal employees are governed by

policies set forth in the employee handbook and should not be included in this Ordinance;

2. The disqualification of a member of any branch of government from employment by the Tribe, for three years after their service has ended, is a violation of his executive power, his right to employ, and violates the right of tribal members to serve in tribal government. The Ordinance violates the rights of tribal members by restricting employment and/or the right to run for tribal office; and

3. The Ordinance as written is too burdensome, broad and usurps the power of the judicial and executive branch.

Mrs. Hammonds and Mr. Clark, appearing before the court argued the following:

1. The Constitution places the responsibility to write law, from which policies are generated, with the Tribal Council and no one is exempt from the law including employees;

2. The Ordinance only seeks to add a measure of integrity to government and does not usurp the authority of any branch of government, but only provides that the Council be informed; and

3. The Ordinance does not reduce the rights of anyone outside the tribal government, but does restrict the rights of the elected and appointed officers as necessary and within the confines of the Constitution.

This court hereby finds as follows:

1. The Ordinance, as written, is unduly burdensome by its complexity. Lumbee custom, the Constitution by its' composition, and the make up of the court itself, with lay people, implies that any Ordinance should be of a composition that can be understood by a majority of the people in all branches of the government and a majority of the tribal membership. The court proceedings have shown that this Ordinance is not understood by members of the Tribal Council or the Chairman.

2. We find Section 2 Item No. 4 of the Ordinance, to be too broad and limits the rights of members (as defined by the Ordinance) to make a living or be secure in their persons as required in Article III Section 2 of the Constitution. We further find the Ordinance limits the rights of the general membership to run for office.

3. This Ordinance violates Article III Section 3 of the Constitution by interfering with the duties of the Chairman in regard to his

responsibility for the tribal employees through the administrator. Furthermore, Section 6 Item 5-a of the Ordinance, places the Council as having the same role as the Chairman in the disciplinary proceedings of the administrator. The tribal administrator works at the pleasure of the Chairman not the Council. Pursuant to Article VII Section 1 (C) of the Constitution, the Council is to confirm the employment or dismissal only of the tribal administrator.

4. This Ordinance places the judiciary under more rigorous restrictions, as opposed to any other branch, by allowing one person the power to remove a judge from a judicial proceeding with a single affidavit.

5. This Ordinance is so overly broad that many actions, innocent in nature, could be perceived as a conflict of interest. This Ordinance could also be construed as an attempt to write policy for other branches of government.

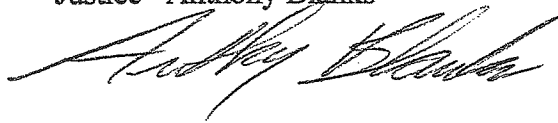
The ordinance should establish law and policies should be generated from the law. The law should apply to all three branches of government, as well as to any employee or entity created by any branch. The law should apply equally and consistently to each branch of government, employee or entity. The policies generated from this Ordinance, by each branch, should be enforced by each branch. We agree that the Council does have a right to be informed and that there must be accountability through a checks and balance system for our tribal government.

It is very troubling to this court that legislation passed by the Council has failed to be enacted due to failure to post either because of negligence or purposeful oversight. The executive branch is responsible for seeing that enacted laws are duly posted and executed. Some one employed by the Tribe should have this responsibility. This court is also troubled that most legislation, generated by the Council, is a result of some previous action, fashioned to control the behavior rather than written to stimulate policies to better serve the membership.

THEREFORE, WE HOLD THAT ORDINANCE NO. 2005-011 IN ITS PRESENT FORM CONTAINS SECTIONS THAT ARE UNCONSTITUTIONAL, TOO BROAD, CONTRADICTORY AND AS A WHOLE TOO COMPLICATED. WE FURTHER HOLD THAT THIS ORDINANCE DOES USURP THE AUTHORITY OF OTHER BRANCHS OF GOVERNMENT. IT IS HEREBY ORDERED THAT THIS ORDINANCE BE RE-WRITTEN TO PROSCRIBE CONFLICTS OF INTEREST AS PER ARTICLE XI SECTION 2 LUMBEE CONSTITUTION.

This order is entered this 20th day of October 2005.

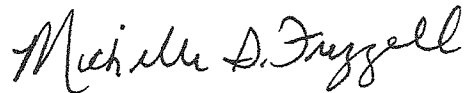
Justice Anthony Blanks

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Justice Tony Hunt

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Justice Michelle Frizzell

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Justice Patricia Freeman

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