



THE SUPREME COURT OF THE LUMBEE TRIBE OF NORTH CAROLINA

Justice Mark Brooks  
Justice Kelvin Jacobs

Justice Tona Jacobs  
Justice Eric Freeman

TRIBAL MEMBERS of the Lumbee Tribe )  
of North Carolina Louise Mitchell, Sam )  
Kerns, Welford Clark, Sheila Beck, )  
Pearlean Revels, Danita Locklear, Gary )  
Deese, Christopher Clark, Maxie )  
Hammonds, and Darlene Jacobs )

Vs. )

Tribal Speaker, Ricky Burnett, on behalf )  
of the Tribal Council of the Lumbee )  
Tribe of North Carolina )

**RESPONDENT(s),** )

Case No.: 2022-02

**Ruling Transcript**

**IN THIS MATTER** a petition was filed on December 22<sup>nd</sup>, 2022, and a hearing on the matter was held on April 3<sup>rd</sup>, 2023. The Petitioner(s) alleged violation(s) of CLLO-2010-0312-01, commonly referred to as the "Ethics and Conflicts of Interest" ordinance. The Petitioner(s) alleged the Respondent(s) had not adhered to legislative duties prescribed in Section 2.1 (Appointments) of said ordinance, which states, "to the extent possible, appointee(s) shall be tribal members who are not seated Tribal Council members, to affiliated government positions of organizations, boards, and entities." Specifically, the Petitioner(s) alleged the Respondent(s) appointed a seated Tribal Council member(s) to an affiliated board in violation of the ordinance.

The following transcript is the Court's oral ruling made by Chief Justice Mark Brooks on April 3<sup>rd</sup>, 2023, and can be viewed (Beginning at 2:07:58):

<https://www.youtube.com/live/UbVkJ9locz8?si=ZQ07dahfBsoEt3M->


I have to say, Ms. Mitchell, the court has a problem with your opinion of "to the extent possible" and it's problematic because it creates a difficulty for the Court to put together a reasoning in this matter that would even make it possible for the Council to respond. Ms. Beck's question was, "what policies and procedures ought to be in place to make an appointment to someone to the extent possible of a non-Council member?" Well, if your opinion or your definition of that is

that always excludes Tribal Council members, that question is moot. It's not even a relevant question. Because it means that the Tribal Council will just always appoint non-Council members. And the problem that this court has is that we disagree. We believe that the ordinance was written that way specifically so that the Council could preserve the right to at times appoint Tribal Council members to non-Council positions.

That's not the court saying that we believe that's right. That's not the court saying that we believe that's efficient or best serves the Lumbee people. That's this court saying that we believe that was written particularly for that reason so that there would be times like this where a court would have to come in and make a determination whether or not they've acted to the extent possible.

Now, if it were the case that to the extent possible meant that this Council will always appoint non-Council members to this position, to these positions, it would have been a very easy decision for us tonight. We would have just sat here and we would have said, Ms. Mitchell, can you point to us persons who have been appointed who were not non-council members? And you would have said, yes, I can name three. And we would have looked at the respondents and we would have said, do you dispute this? And they would have said, no. And we would have said, case closed. But that's not our opinion. Our opinion is that the Council does reserve the right to appoint Tribal Council members to these positions, to the extent possible.

I think the greater question for this court would be, does this court have the constitutional authority to impose its belief as to what the extent possible means onto the Tribal Council? And I think that that would get us to a separation of powers issue. In other words, suppose that the tribal council believes that to the extent possible means A, B, and C. And the Supreme Court believes that to the extent possible means D, E, and F. I can't say with certainty, Ms. Mitchell, that this Court has the authority to impose its belief and its opinion from a judicial standpoint on to our legislature in making that decision. But because you don't even believe that matters (that to the extent possible means "always"), we don't have to get to that point. And I believe that it's the will of this Court to decide that you have not met your burden. And that the Tribal Council has not violated its ordinance by appointing Tribal Council members to non-Council boards. The board is adjourned.

  
Mark Brooks, Chief Justice