



Mashpee Wampanoag Tribe
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2022-RES-039

REQUEST FOR JUDICIAL ADVISORY OPINION REGARDING TRIBAL COUNCIL VACANCY UNDER ARTICLE VIII

WHEREAS, the Mashpee Wampanoag Tribe (“Tribe”) is a federally-recognized Indian tribe with a duly-enacted Constitution;

WHEREAS, the Mashpee Wampanoag Tribal Council (“Tribal Council”), the governing body of the Tribe, deems it essential under Article VI, § 2.A. of the Mashpee Wampanoag Tribal Constitution (“Constitution”) to promote and protect the political integrity, economic security and general welfare of the Tribe and members of the Tribe;

WHEREAS, on July 6, 2022, in accordance with Article VIII, § 2.(b) of the Constitution, and as duly noticed, the Tribal Council held a meeting to consider the expulsion of the Tribal Council Treasurer on the grounds of malfeasance and nonfeasance;

WHEREAS, the Tribal Council considered five (5) grounds of malfeasance and six (6) grounds of nonfeasance and, by the affirmative vote of seven (7) Tribal Council members, voted to expel the individual from their official capacity as Tribal Council Treasurer;

WHEREAS, Article VIII, § 4 provides the parameters for the “*Filing of Vacancies in Office*” and provides in pertinent part:

(a) Except as provided in this Constitution, any vacancy in the office of an elected Tribal official shall be filled as follows:

(1) For a vacancy that occurs within the calendar year, the Tribal Council shall appoint within 30 days of such vacancy the candidate that received the highest number of votes next to the person who vacated the office that is intended to be filled under this Section.

(2) If any additional vacancies occur in the same calendar year, then the Tribal Council shall immediately issue a 10-day notice to the registered

voters of the Tribe informing them of the vacancy and that nominations shall be taken at the next monthly general Tribal membership meeting following the end of the notice period; and further providing, that at the monthly general Tribal membership meeting following the meeting where nominations were made, a vote will be taken on the nominations with the nominee receiving the highest number of votes filling the vacancy.

WHEREAS, this is the first instance in which the Tribal Council has had to fill a Tribal Council vacancy pursuant to Article VIII, § 4.(a)(1) and the meaning of the language “within the calendar year” appears ambiguous as to whether the calendar year refers to the year in which the vacancy occurs or the calendar year of the relevant Tribal election;

WHEREAS, the Tribal election for Tribal Treasurer occurred on May 16, 2021;

WHEREAS, because this is a case of first impression and of the utmost importance of the Tribe given it addresses the vacancy of an elected official, the Tribal Council has determined that it is necessary to request an advisory opinion from the Mashpee Wampanoag Tribal Supreme Court (the “Supreme Court”) in order to answer the following questions posed by Tribal Council regarding the above-mentioned Constitutional provisions that relate to the “Fillings of Vacancies of Office”:

1. Does the language “within the calendar year” provided in Article VIII, § 4(a)(1) refer to the calendar year in which the corresponding Tribal election was held, which would require the Tribal Council, in this case, to fill the vacancy in accordance with subsection (a)(2) given the date of vacancy occurred after the calendar year had passed; or
2. Does the language “within the calendar year” provided in Article VIII, § 4(a)(1) refer to the calendar year in which a vacancy occurs, which would require the Tribal Council, in this case, to fill the vacancy in accordance with this subsection and appoint the candidate that received the highest number of votes next to the elected Tribal Treasurer on May 16, 2021?

WHEREAS, the Supreme Court has the authority to issue an advisory opinion upon the request of the Tribal Council where the matter involves a “matter[] of grave importance” and the Supreme Court has in the past deemed election issues, at issue here, to rise to such a level, *In re the matter of 2014 Election of Four Tribal Council Members*, Case No# CV-13-003 (2013).

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Council hereby requests an Advisory Opinion from the Mashpee Wampanoag Tribal Supreme Court regarding the following questions of law related to Article VIII, § 4(a)(1) and Article VIII, § 4(a)(2).

1. Does the language “within the calendar year” provided in Article VIII, § 4(a)(1) refer to the calendar year in which the corresponding Tribal election was held, which would require the Tribal Council, in this case, to fill the vacancy in accordance with subsection (a)(2) given the date of vacancy occurred after the calendar year had passed; or

2. Does the language “within the calendar year” provided in Article VIII, § 4(a)(1) refer to the calendar year in which a vacancy occurs, which would require the Tribal Council, in this case, to fill the vacancy in accordance with this subsection and appoint the candidate that received the highest number of votes next to the elected Tribal Treasurer on May 16, 2021?

BE IT FINALLY RESOLVED, nothing in this resolution shall be read or construed to effect, modify, limit, or waive the sovereign immunity of the Tribal Council or the Tribe, its departments, agencies, organizations, officers, agents, employees and/or instrumentalities.

All resolutions or parts of resolutions inconsistent with this resolution are repealed. This resolution is effective immediately and shall continue pursuant to the authority vested in the Tribal Council pursuant to Article VI, § 2.A. of the Constitution.

CERTIFICATION

We, the undersigned Chairperson and Secretary of the Mashpee Wampanoag Tribal Council, do hereby certify that the Tribal Council is composed of 13 members of whom 9, constituting a quorum, were present at a regular meeting thereof, duly and regularly called, noticed, convened, and held on the 20th day of July, 2022, and that the foregoing resolution was duly adopted by the affirmative vote of **8** members, with **0** opposing, and with **0** not voting.

DATED this 20th day of July, 2022.



Brian Weeden, Chairperson
Mashpee Wampanoag Tribal Council

ATTEST:



Cassie Jackson, SECRETARY
Mashpee Wampanoag Tribal Council