

1 argument is not persuasive. This argument would limit the ability of the sovereign to govern.
2 While it may seem unfair, arbitrary or capricious to anyone unfamiliar with the rule of
3 sovereign immunity, the legislature is answerable at elections for how it chooses to govern.
4 As a matter of law, Appellee rightfully argues Beers is applicable. Beers v. Arkansas, 61 U.S.
5 527, 20 How. 527, 15 L. Ed. 991 (1858) (“It is an established principle of jurisprudence in all
6 civilized nations that the sovereign cannot be sued in its own courts, or in any other, without
7 its consent and permission; but it may, if it thinks proper, waive this privilege, and permit
8 itself to be made a defendant in a suit by individuals, or by another State. And as this
9 permission is altogether voluntary on the part of the sovereignty, it follows that it may
10 prescribe the terms and conditions on which it consents to be sued, and the manner in which
11 the suit shall be conducted, and may withdraw its consent whenever it may suppose that
12 justice to the public requires it”). Tribes are with great certainty members of the “civilized
13 nations” to which Justice Tandy refers, and the tribal courts are limited, as are the courts of
14 any other sovereign, to when it may hear a matter involving the sovereign.

15 While judicial rules allowing suits to go forward in the face of sovereign immunity have
16 been created, those exceptions are not at issue here. See Ex parte Young, 209 U.S. 123
17 (1908); Nisqually v. Gregoire et. al, 623 F.3d 923 (9th Cir., 2010). Appellant did not ask for
18 injunctive relief against the grievance procedure, but for monetary compensation. Therefore
19 Appellant’s case must be dismissed for a lack of clear and unequivocal waiver of sovereign
20 immunity.

21 DECISION

22 Dismissal of the Appellant’s case is AFFIRMED.

23 Made, this 18th day of May, 2015, by



24 _____
25 Thor A. Hoyte
26 Chief Justice
Sisseton-Wahpeton Oyate

1 sovereign immunity of the Sisseton-Wahpeton Oyate;

2 3) The Sisseton-Wahpeton Oyate did not waive its immunity from suit;

3 4) Dismissal of Appellant's suit for sovereign immunity is AFFIRMED.

4 **DISCUSSION**

5 The privilege of the sovereign to determine when it may be brought into its own courts is
6 long-held, and tribes have enjoyed that privilege as any other sovereign. Santa Clara Pueblo v.
7 Martinez, 436 U.S. 49, 56 L. Ed. 2d 106, 98 S. Ct. 1670 (1978); Manning v. Jim, No.
8 ITCN/AC CV-13-013 (Nevada Inter-Tribal Court of Appeals, 2013) *citing* Boice v. Washoe
9 Tribe of Nevada and California, No. C-WT-97-34, (Nevada Inter-Tribal Court of Appeals,
10 2001); *see* WILLIAM WOOD IT WASN'T AN ACCIDENT: THE TRIBAL SOVEREIGN IMMUNITY
11 STORY (Am. Univ. Law Review, Vol. 62: 1587).

12 The question of whether a tribe is immune from suit is reviewed *de novo* on appeal.
13 United States v. James, 980 F.2d 1314, 1319 (9th Cir. 1992), *cert. denied* 510 U.S. 838 (1993).
14 Sovereign immunity must be unequivocally expressed. Santa Clara; United States v. Testan,
15 424 U.S. 392, 399 (1976) (*quoting* United States v. King, 395 U.S. 1, 4 (1969)).

16 Furthermore, the legislative body has the discretion to choose to grant a waiver of
17 immunity or *withdraw* a waiver of immunity. Sisseton-Wahpeton Oyate Tribal Code 33-02-01
18 (The Court shall have no jurisdiction over any suit brought against the Tribe without the
19 consent of the Tribe, unless by specific legislation the tribe has restricted its sovereign
20 immunity under certain circumstances).

21 Appellant invites the Court to limit the ability of the legislature to legislate. We decline
22 that invitation. The Oyate has declared itself immune from suit unless the legislature has said
23 otherwise, and the ability to legislate is the ability to enact, and *withdraw*, legislation.

24 Appellant points to legislation passed on December 3, 2014, where the Oyate Tribal
25 Council passed a motion (Motion #25) allowing Mr. Deutsch's suit to go forward in tribal
26 court to the extent of insurance. However, on December 16, 2014, the Tribal Council passed
Motion #32, revoking the waiver in Motion #25. Motion #32 is still current law of this case.

Appellant argues that once the waiver was granted, it could not be rescinded. This

FILED

SISSETON-WAHPETON-SIOUX
TRIBAL COURT

IN THE SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION

Date

Clerk of Courts

SUPREME COURT

In the Matter of:

NO. CV-14-216-149

BRANDON DEUTSCH

Appellant,

OPINION AND ORDER

v.

SISSETON-WAHPETON SCHOOL BOARD,

And Donovan White, Crystal Owen, Sylvania
Flute, June Renville, Sam Crawford Jr., Gerald
German Jr., Marie Renville, in their capacity as
Members of the Sisseton-Wahpeton School
Board

Appellees.

Per curiam (Chief Justice Thor A. Hoyte, Associate Justice Russell Zephier, Associate Justice
Pat Donovan)

In the matter of the appeal of Deutsch versus the Sisseton-Wahpeton School Board, the
Sisseton-Wahpeton Supreme Court held a hearing on April 24, 2015. Present was the
Appellant, represented through his counsel, Kay Nikolas, and Appellees, represented through
its counsel, Gordon Nielsen.

The parties submitted briefs and presented oral arguments. The Court has considered all
materials and arguments and finds the following:

1) The Sisseton-Wahpeton Oyate is a sovereign, and as such, has the right to determine
its availability to be sued;

2) The Sisseton-Wahpeton School Board enjoys the