

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

“ ‘Person’ means any person, firm, corporation, association or other unit.”
The State is not mentioned. For a clear illustration of the principle involved,
see the definition of ‘employer’ in Chapter 26, R. S. 1944 section 2, subsection
I:

“ ‘Employer’ shall include corporations, partnerships, natural persons,
the state, counties, etc.”

In view of this pronounced opinion as to the law which, when given, created
considerable furor in the industry, it was stated to Mr. Chenevert that this
office did not believe the University needed any license to buy milk at the best
price it could get. We believe that the issuance of a license to the University
altered in no way its legal status, as it had a legal right to buy competitively
anyway. In other words, the whole transaction amounts to doing under the
color of a license that which can be done anyway.

We are not familiar with the operations of the various institutions and
therefore wonder if there may not be a difference between them and the
University of Maine as to milk consumption, in that at the University it is
actually dispensed through the cafeterias and the campus store, which may not
be the case in the institutions.

We should like to suggest as a matter for practical consideration that the
licensing of the Department of Institutional Service might create as much
furor in the industry as did our original opinion referred to above.

So far as any question of law is concerned, we still hold that the institutions
don’t need licenses to buy competitively. If they do purchase or receive milk
for sale, and the Commission chooses to issue a license, it would be of no
concern to the Attorney General’s office, since such license neither adds to or
alters the legal status of the institution.

JAMES G. FROST
Assistant Attorney General

December 18, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Indian Reservations

In response to your memo of November 20, 1951, an attached letter from
Mr. Edward E. Chase, directed to Mr. Fessenden, relative to the status of
Indian lands, the following information is supplied, attention being primarily
directed to the possibility of an Indian’s owning land on a reservation, no
opinion being expressed relative to the sale or lease of appurtenances to the
land.

Under the Treaty of 1794 between the Commonwealth of Massachusetts and
the Passamaquoddy Indians and connected tribes, certain lands, including
Pleasant Point, were assigned to the Indians and confirmed to the said Indians
and their heirs forever.

Thus it would seem that the fee simple title to that land is today in the
Indians. However, the State, from time to time, has taken control of these
lands to the extent that their alienation has been restricted.

While it appears that with respect to the land of the Penobscots the attributes of ownership are more clearly present in those Indians who possess certificate of title provided for by Chapter 137 of the Public Laws of 1883, nevertheless transfer of such land is limited to conveyances between members of the same tribe and subject to the approval of the Indian Agent. In other instances, where land is assigned to an Indian by an Agent under the provisions of Section 343, Chapter 22, R. S. 1944, such land is the property of the person to whom it is assigned during the pleasure of the legislature.

Again, with respect to the land of Passamaquoddy Indians, it is altogether possible that one family has been in possession of a particular tract of land for such a long period of time that he might feel he has complete legal title. For instance, under Chapter 73 of the Resolves of 1883, any male Indian upon reaching the age of 21 years, who desired to take up any one of the lots purchased by the State under Chapter 73, could do so and he would have received a certificate of permanent occupancy and possession. However, he was required to perform certain acts during his occupancy, or the right to the lot would be forfeited.

Similarly, under Chapter 186, Resolves of 1849, an Indian might have received a conveyance from the Governor, conditioned that it would be his so long as he or his lawful heirs should reside thereon and improve the same.

The whole question of the status of tribal lands is therefore somewhat anomalous. Though the land would appear to be vested in the Indian, legislation has so encompassed his ability to transfer such land, that ultimately the conclusion must be that the land on a reservation is state land, but held for the use of the Indians, at least so long as they remain a tribe, on that reservation.

In answer, then, to Mr. Chase's question relative to ownership of land, it must be said that the land on which an Indian resides is not "owned" by that Indian. Certain of the Penobscots may have such interest in the land on which they reside, by virtue of certificates, that they may convey it to members of the same tribe, with the approval of the Indian Agent.

The leasing of such land is controlled by Chapter 133, Resolves of 1867, amended by Chapter 6, Resolves of 1878, and Section 341, Chapter 22, R. S. 1944.

Indians of the Passamaquoddy Tribe and certain Indians of the Penobscot Tribe not having the above mentioned certificates, may have been assigned and resided on a particular parcel of land for a long period of time, but their tenure would seem to be subject to conditions outlined by the legislature, i.e., keeping the land improved, continuous holding of that land, or at the pleasure of the legislature.

With respect to Mr. Chase's question relative to an original agreement with the Catholic Church or with the Sisters regarding the rights of the church and the school, we have been advised by the Department of Education and the Department of Health and Welfare that there is no contract of such a nature.

Therefore, expenditures for school purposes should be made in compliance with Section 337, Chapter 22, R. S. 1944, under the supervision of the tribe

and subject to the approval of the Department of Health and Welfare.

JAMES G. FROST
Assistant Attorney General

December 21, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Employment of Persons who have attained age 70.

We have your memo of November 1, 1951, in which you make inquiry as to the present policy of the State relative to the employment of persons 70 years of age or older. You state that from time to time it has been the policy of this State to permit the employment of such persons if it was found necessary or desirable because of existing emergencies.

Section 6-A of Chapter 384, P. L. 1947, provides that any member of the Retirement Service who attains the age of 70 shall be retired forthwith, with the possibility that employment may be extended for the further term of one year at the request of the Governor with the approval of the Council.

Compulsory retirement at age 70 with a possible one-year extension at the request of the Governor with the approval of the Council would seem to negative the employing of persons aged 70 years or more. Therefore presently the policy is not to employ persons 70 years of age or older, according to the opinion of John S. S. Fessenden, Deputy Attorney General to Governor Payne, dated November 9, 1951, relative to the appointment of a person over 70 years of age to public office, the pertinent portion of which we here quote:—

“Also we should point out that the provisions of the State Retirement System provide direct limitations for employment at 70 years of age, employment thereafter to be only upon the express authority of the Governor and Council, extending the employment under certain circumstances. . .

“The foregoing is sufficient to point out what appears to be a distinct trend in legislative policy to refrain from retaining in the public service persons who have arrived at the age of 70 years.”

It is therefore our opinion that presently there exists no such emergency as would permit of the general policy of employing persons 70 years of age or over.

JAMES G. FROST
Assistant Attorney General

December 27, 1951

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Probation Clerk, Cumberland County

In answer to your memo of October 16, 1951, in which you ask if the probation clerk of Cumberland County, appointed by the Judge of the Portland Municipal Court, is actually an appointed official, so that membership in the Retirement System for such clerk is optional, we should like to express