

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

The legislature has determined that under the above described circumstances it would be as if a member had elected Option 2. It is stated in your memo that the actuary is of the opinion that only one person is eligible for benefits under Option 2 and that if two persons are to be considered beneficiaries, then Option 4 should have been selected. However, as noted in your memo, before the benefits of Option 4 could be available to the beneficiary, it would be necessary for the member to substitute a program under that Option. The member never so specified; and we feel that neither the Board nor this office should substitute its opinion for that of the legislature in determining which option should be available to the member. In view of the fact that the member indicated not one but two beneficiaries at the time she filed her initial application for membership and that such application was accepted by the Board without objection, we are of the opinion that the State is estopped from denying the beneficiaries the benefits of Option 2.

For these reasons this office is of the opinion that the two beneficiaries designated by the member are eligible to receive the benefits provided in Option 2.

You have indicated to us orally that, administratively, it would be difficult to make the benefits of Option 2 available to more than one beneficiary. If the question had been posed to us in the first instance, we should probably have ruled that the statute contemplated only one principal beneficiary. Under the present facts, however, we must rule that there may be two beneficiaries. In view of the practical difficulty involved in administering the benefits to more than one person, it might be advisable in future to have one principal beneficiary designated and perhaps contingent beneficiaries, the latter taking in the event they survived the principal beneficiary.

JAMES G. FROST
Deputy Attorney General

February 3, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Eligibility for Appointment to Dental Board

This office has been asked if a man who has served over nine years but less than ten years on a dental examining board is eligible for re-appointment to the Board of Dental Examiners.

Specifically, it is asked if the following provision quoted from Section 1, Chapter 66, R. S. 1944, would preclude the appointment of such a person.

“No person shall be eligible to appointment on said board who shall have served 10 years or more on a dental examining board in this state.”

It is our opinion that, if otherwise qualified, such a person would be eligible to be appointed to the Board.

Attention is directed to the underlined section of the above quoted provision.

The clear intent of such a provision is to make ineligible for appointment such person who has completed 10 or more years of service at the time the necessity for appointment arises. Until a person has completed 10 or more

years of this contemplated service if otherwise qualified, he would not be ineligible because of the fact that during his next term of office he would have served 10 or more years.

ALEXANDER A. LaFLEUR

Attorney General

February 6, 1953

To Ernest H. Johnson, State Tax Assessor

Re: Sales Taxes on Indian Reservations

You inquire whether the Maine sales and use tax applies to sales at retail on Indian reservations.

Literally the act applies. Section 3 imposes the tax on sales at retail "in this state". "In this state" is defined to include everything "within the exterior limits of the State of Maine and includes all territory within these limits owned by or ceded to the United States of America".

The Indian treaties are printed at pages 253, *et seq.*, in the 1843 statute volume. I have read these treaties and do not find anything therein which would indicate that the Indians are to be considered exempt from excise taxes.

As you know, the Indians are exempted from poll and property taxes by Chapter 81, Section 6, Subsection VIII.

It would appear that the sales tax law taxes sales on Indian reservations unless there is something in the Constitution to prevent such taxation.

The only mention of Indians in the Constitution which I have been able to find is Section 1, Article II, where "Indians not taxed" are excepted from the class of persons entitled to exercise suffrage.

Among the few cases involving the status of Indians, *State v. Newell*, 1892, 84 Me. 465, is perhaps the most pertinent here. An Indian was charged with killing a deer contrary to law. The Indian defended himself by asserting an ancient agreement that the Indians should continue to be able to hunt without impediment. The court held that this ancient agreement does not avail because the tribe which made it has ceased to exist in the sense that it did exist when the agreement was made. The tribal organization cannot now make war or peace, make treaties, punish crimes, etc., noted the court. But it could at the time the treaties were made.

"We do not find that the Federal Government ever by statute or treaty recognized these Indians as being a political community, or an Indian Tribe, within the meaning of the Federal Constitution."

Thus, the court held that Maine Indians are not within the language of the interstate commerce clause which, of course, applies not only to commerce between the states but with "Indian Tribes".

Thus it would appear that Indians are subject to the general law of the State of Maine.

In *Murch v. Tomer*, 1842, 21 Me. 535, there was a civil action against an Indian on a promissory note. The court discussed the Indian's status saying that he is like a ward but is not one.