

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

for the calendar years  
**1951 - 1954**

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.

“Our Constitution seems to contemplate that, under certain circumstances, they may become voters at our elections. It only excludes such from voting as are not taxed.”

The court noted that the tribe is in no sense a foreign nation, stating that the State may send in peace officers to maintain law and order on the reservation.

At one time the Supreme Judicial Court was asked whether Indians had a right to vote. They avoided this question. 137 Me. 358-9.

The U.S.C.A., Title 8, Section 3, provides:

“All Indians born within the territorial limits of the United States are declared to be citizens of the United States.”

The matter has been before the Attorney General. Mr. Breitbard, on February 18, 1944, wrote Mrs. Mildred Akin that the polls and estates of Indians are not taxable, adding, “However, in case an Indian votes, his estates are taxable.”

An Indian has been held to be subject to the Federal income tax and to state income taxes. *Choteau v. Burnet*, 1930, 283 U. S. 691, and *Leahy v. Treasurer*, 1936, 297 U. S. 420. In such cases the Indian had been certified to be competent and the income taxable was derived from the mineral resources of the reservation.

In summary, the laws of the State of Maine apply within the reservation and there is nothing in the law to make for any exemption in the case of sales taxes on sales occurring there. I see no connection, as the Attorney General's office has interpreted the law, between the right of suffrage and the duty to pay sales taxes. Under our Constitution the right of suffrage is tied to the duty of paying poll taxes and taxes on estates. There is no other connection between voting and paying taxes.

There being nothing in the Constitution to prevent, and the law being clear, the sales tax law applies, in my opinion, to sales made on Indian reservations.

BOYD L. BAILEY  
Assistant Attorney General

February 6, 1953

To Frank S. Carpenter, Treasurer of State

Re: Deposit of Trust Funds

We have your memo of February 3, 1953, in which you ask:

“Is it legal for the State Treasurer to invest the Public Administrator's Fund and the Receivers Fund for Defunct Banks under the provisions of Chapter 15, Sec. 11?”

The provisions relative to Public Administrator's Fund are found in Section 44 *et seq.* of Chapter 141, R. S. 1944, and there it is stated that the State shall be responsible for the principal for possible claimants for a period of 20 years.

The provisions relative to the Receivers Fund for Defunct Banks are found in Sections 67 *et seq.* of Chapter 55, R. S. 1944, and this Fund is to be held in trust for 20 years pending certain actions by possible claimants after which time no claims may be presented.