

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

“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.

It is our opinion that these funds are of such a nature that they may be invested under the provisions of Sec. 11 of Chapter 15, R. S. 1944, relating to the investment of trust funds.

JAMES G. FROST
Deputy Attorney General

February 19, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Appointments by Governor and Council

Section 1 subsection VI, Chapter 13 of the Revised Statutes of 1944 provides that, subject to the approval of the Governor and Council, the Chief (of the Maine State Police) may designate a member of the State Police to act as his deputy.

With respect to the procedure to be followed by the Governor and Council when approving or not approving the deputy designated by the Chief, it has been asked if

1. The Governor and Council act in concert, having one vote each, in the aggregate totaling eight votes; or
2. If the Governor and Council vote as separate bodies, the Governor having one vote and the Council having one vote (the latter vote being determined according to the majority vote of the members of the Council).

It is the opinion of this office that under the above quoted provision the Governor and Council vote as separate bodies, each having one vote.

The Constitution of Maine provides that the supreme executive power of this State shall be vested in a Governor. The Council advises the Governor in the executive part of government and he, with the Councilors, or a majority of them, may from time to time, hold a council for ordering and directing the affairs of State according to law.

It will be noted that with respect to the usual appointment to public office given to the Governor and Council, such appointment is to be effected by the Governor's first nominating the individual and then appointing with the advice and consent of the Council.

Such appointment has generally been understood to be an appointment by the "executive". This definition of "executive", to mean the Governor with the advice and consent of his Council, can be seen in messages of the various Governors;—Governor Kent, 1835; Governor Dunlap, 1837; Governor Smith, 1831, and others. Opinion of Justices, 72 Maine 548.

Though the "executive" in these instances includes both Governor and Council, it is clearly seen that on the part of each there was exercised a particular power, the nomination by the Governor, the supreme executive, and the appointment by the Governor with the advice and consent of the Council.

Now then, by referring back to the first quoted provision of law, it can be seen that the designation of the deputy is subject to the approval of the "executive", the Governor and Council. Logically following the clear-cut