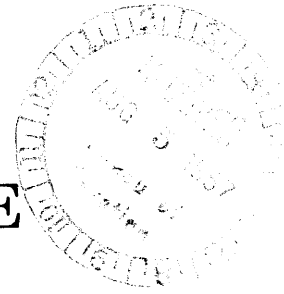
STATE OF MAINE



REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1955 - 1956

It is obvious from the above quoted portions of the statutes that the legislature believed that the type of work to be done about a hotel required a minor to be of an older age to do such work, whereas employment in an eating place did not contain such possibilities of danger.

In answer to your first question it is our opinion that, where a hotel dining room is leased by the hotel to another person who operates that dining room as a restaurant, such dining room should be considered part of the hotel and be subject to a minimum age of 16 years, under the provisions of Section 23.

With respect to your second question, where the dining room of a hotel is in another building, we are of the opinion that such dining room should be considered an eating place and the 15-year age limit be considered under the provisions of Section 25.

JAMES GLYNN FROST
Deputy Attorney General

August 31, 1955

To Harvey H. Chenevert, Executive Secretary, Maine Milk Commission

Re: Fees on out-of-State Milk

. . . You ask for an opinion concerning the following situation: A dealer in Maine drops his Maine producers and buys milk from a dealer in New Hampshire. Recognizing that you cannot collect a fee from the New Hampshire dealer, you ask whether or not the Maine dealer is the first handler in Maine and therefore subject to the fees set forth in Section 6 of Chapter 33.

It is our opinion that under the situation set forth above, a Maine dealer purchasing from an out-of-State dealer is the first handler and under Section 6 is subject to the 3c per hundredweight monthly payments.

The sixth paragraph of Section 6 reads as follows:

> "Each licensed dealer shall pay to said commission an annual license fee of $1 and the sums of 3c per hundredweight as monthly payments, based on quantity of milk purchased or produced in any market area. One and one-half cents per hundredweight may be deducted by dealers from amounts paid by them to producers of such milk; except that the milk, farm-processed into cream for the manufacture of butter, shall not be subject to such sums of 3c per hundredweight."

The paragraph above quoted provides that the dealer shall pay the 3c monthly payment and it provides that he may deduct 1½c per hundredweight from the amounts paid to producers for such milk. We feel that if he cannot deduct such sums from a dealer outside the State, he is still subject to the entire 3c per hundredweight monthly payment.

JAMES GLYNN FROST
Deputy Attorney General

September 6, 1955

To Paul A. MacDonald, Deputy Secretary of State

Re: Voting by Indians

. . . You ask for an opinion relative to the voting rights of Indians as a result of the constitutional amendment adopted by the people on September 13,

1954, and proclaimed by the Governor on September 21, 1954, and Chapter 190, Public Laws of 1955.

Prior to the adoption of the constitutional amendment above referred to, Article II, Section 1, paragraph 1, contained a provisions expressly excluding Indians not taxed from voting:

> "Every citizen of the United States of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, *and Indians not taxed,* having his or her residence established in this state for the term of six months next preceding any election, shall be an elector for governor, senators and representatives in the city, town or plantation where his or her residence has been established for the term of three months next preceding such election. . ."

The constitutional amendment amended Section II by deleting from paragraph 1 the words above underlined, "and Indians not taxed," and adding a third paragraph which reads as follows:

> "Every Indian, residing on tribal reservations and otherwise qualified, shall be an elector in all county, state and national elections."

In the light of this constitutional amendment, and in order to provide the necessary mechanics to make the amendment effective, Chapter 190 of the Public Laws of 1955 was enacted. Entitled, "An Act Creating Voting Places for Indians," the Act provides for the establishment of voting places on each of three reservations,

> "at which polling place all Indians residing on the . . . tribal reservation and otherwise qualified . . . shall vote in all State, county and national elections, including primary elections."

With respect to the above provisions of law, both constitutional and statutory, you inquire as to the method of determining which Indians are to be allowed to vote. You state that a voting list will have to be compiled before the election of September 12, and you specifically ask, "Should the census list furnished by the Bureau of Health and Welfare be used as the voting check list or should some other method be used, and, if so, what method do you suggest?"

Chapter 25, Section 321, R. S. 1954, defines an Indian

> "for all purposes as being a person who is in whole or to the extent of at least ¼ part of Indian blood."

The following portion of your letter is quoted because it spells out the situation which causes you to seek an opinion from this office:

"I am told by Dr. Fisher that no Indians on the Tribal Reservations are of the full blood and that the Penobscot Tribe itself determines what Indians have one-fourth blood. There are many Canadian Indians residing on the Reservation; there are Indians from other tribes than the Penobscot residing there. Many of these Indians claim one-fourth blood or better but have never been declared Indians, as such, by the Tribal Council.

"A census list is compiled by the Department of Health & Welfare of Indians on the Reservation at Old Town but this list contains only the names of those persons who have been declared by the Tribal Council to be one-fourth blood Indians.

"A very serious problem arises in connection with the election of September 12 and subsequent elections as to what Indians are to be allowed to vote. If the so-called census list is followed, only those Indians who have been declared such by the Penobscot Tribe will be allowed to exercise the franchise. If, however, all persons residing on the Reservation are allowed to vote, it will include persons who contain much less than one-fourth blood and perhaps no Indian blood at all as I am informed there are many white men living on the Island who have married Indian women."

We are of the opinion that the census list compiled by the Department of Health and Welfare should *not* be used in determining the voting eligibility of Indians residing on the Reservations.

The census list referred to is provided for in Section 369, Chapter 25, R. S. 1954, and is a census of the Penobscot Tribe. It does not purport to be a list of all Indians residing on the Reservation, but only of those Indians belonging to that Tribe.

The constitutional amendment does not restrict the voting privilege to members of the tribe only, but extends the privilege to *"every* Indian residing on tribal reservations."

As stated in your memo, there are non-tribal Indians residing on the Penobscot Reservation, and presumably they are properly there. Section 349, Chapter 25, R. S. 1954, provides for the removal of persons from the Reservation who are not members of the tribe, nor the husband, wife or legally adopted child of a member of the tribe. If such person is, however, residing on the Reservation, is an Indian as defined by statute, and otherwise qualified, we believe he is entitled to vote on the Reservation.

White persons, or Indians not citizens, may not, of course, vote on the Reservation.

Having decided that the census list compiled by the Department of Health and Welfare may not be used in determining the eligibility of Indian voters, we continue to the second part of your question, asking for a suggestion as to a method which might be used.

You stated to us that in drawing the bill, Chapter 190, P. L. 1955, the author believed that the Board of Registration of the City of Old Town would perform the function of determining the qualifications of the Indians involved. The City, however, has since advised you that the Board will be busy with its own affairs and will not be able to go to Indian Island.

Under such circumstances we would suggest that those Indians claiming the right to vote go to the City of Old Town and appear before the Board of Registration of that City.

Indian Island not being a city, town, plantation or organized territory, the situation is not unlike that of a person in an unincorporated place. Such person has no polling place other than in a town within the same representative district (Section 64, Chapter 5, R. S. 1954), and he must go to that town both to register and to vote.

Chapter 190, P. L. 1955, while directing the municipal officers of the City of Old Town to establish a voting place on Indian Island, does not direct the man-

ner of registration, and we are of the opinion that the only reasonable way to achieve the intent of the Legislature that Indians vote is to have them register in Old Town and then vote on Indian Island.

FRANK F. HARDING
Attorney General

September 9, 1955

To Ronald W. Green, Chief Warden, Sea and Shore Fisheries

Re: Juvenile

It appears from the record presented that X. was charged with the offense of molesting a lobster trap belonging to Clyde Eaton, which was then and there set for the taking of lobsters and crabs, without the written permission of the owner thereof, the same being a violation of Section 117 of Chapter 38, R. S. 1954.

Although the record does not completely disclose the age of the accused, we presume that X. was under the age of 17, in view of the adjudication by the Western Hancock Municipal Court that X. stood convicted before this court of juvenile delinquency.

Section 2 of Chapter 146, R. S. 1954, after setting out certain provisions for juvenile courts relating to crimes committed by children under the age of 17, provides as follows:

> "Any adjudication or judgment under the provisions of sections 4-7 (of Chapter 146) inclusive, shall be that the child was guilty of juvenile delinquency, and no such adjudication or judgment shall be deemed to constitute a conviction for crime."

The Commissioner, under date of August 3, 1955, wrote X. to the effect that his license had been suspended under the provisions of Section 117, *supra,* the last sentence of which provides as follows:

> "Any person convicted of a violation of any provision of this section shall be ineligible to hold a lobster fishing license for a period of 3 years from the date of such conviction."

Attorney for X. has questioned the right of the Commissioner to suspend, in view of the provisions of Chapter 146 above mentioned. The opinion of this office is that X. was not convicted within the meaning of Section 117 of Chapter 38, supra, and that the Commissioner was without jurisdiction to suspend his license.

The legislature has seen fit to cast a protective cloak around juveniles. The cloak may sometimes produce results which were not foreseen at the time. This, apparently, is one of those loopholes, and it would be appropriate for you to seek such legislative action as you may deem necessary after reading this opinion.

ROGER A. PUTNAM
Assistant Attorney General