

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

April 5, 1957

To Honorable Edmund S. Muskie, Governor of Maine

Re: Penobscot Indians

We are returning herewith the petition of certain members of the Penobscot Tribe of Indians, which petition requests the Governor and Council to make available \$4000 from the annual interest of the Penobscot Indian Trust Fund for the purpose of legal counsel for research pertaining to the tribal rights of the Penobscots.

You inquire if either the Department of Health and Welfare or the Governor and Council have the legal authority to make such funds available for the above stated purpose.

We are of the opinion that the purpose for which the funds are requested is not a proper purpose for which to spend such funds from the Indian Trust Funds:

Section 334 of Chapter 25 of the Revised Statutes of 1954 sets forth the procedure under which moneys may be spent from the Indian Trust Funds:

“The department, subject to the approval of the governor and council, may expend for the benefit of either Indian tribe, any portion of the funds of that tribe; provided, however, that the expenditure will not decrease the principal of the fund to such an extent as to prevent compliance with any existing provisions of statute, and provided further, that the tribe whose funds are to be used shall consent to the expenditure at a meeting duly called for the purpose.”

However, we draw your attention to the fact that general supervision over the Indian Tribes is vested in the Department of Health and Welfare and that questions relative to tribal rights come within its jurisdiction. It would, therefore, be the duty of the Attorney General to give opinions and advice to that department concerning such tribal rights.

Inasmuch as the duty upon the Attorney General is a statutory duty, we are of the opinion that the employment of private counsel for the purpose would not be proper.

Nothing herein stated would prevent the Indians from employing private counsel and paying such counsel from their own private funds.

JAMES GLYNN FROST
Deputy Attorney General

April 10, 1957

To Honorable Arthur N. Gosline

Re: Grove Street

It was indicated to us that a portion of Grove Street being discontinued by the City of Augusta so that the new State Office Building might be erected upon it, a new street on land acquired by the State might be allowed to be accepted by the City in its stead.

The question was raised whether Grove Street at that point was owned by the City of Augusta and the City Solicitor engaged to make search to see what form of title the City had.

His search indicated that Grove Street was an old county way, and there was no evidence that it had ever been accepted by the City of Augusta or that the City had purchased any land there.

It not having been accepted, it would seem that its discontinuance was hardly necessary, and the circumstances would indicate that the City had no vested rights there which could be used as a consideration in exchange for the other area.

Under those circumstances it may appear that the State would be under no obligation to allow the new area to become a city street unless that should appear to be desirable.

NEAL A. DONAHUE
Assistant Attorney General

April 18, 1957

To: Earle R. Hayes, Secretary of Maine State Retirement System

Re: "Civilian Employees" of the Adjutant General

We have your memo in which you inquire if certain "Federal" employees in the Department of the Adjutant General are eligible to participate in the Maine State Retirement System.

The "Federal" employees concerning whom you make inquiry are the civilian employees of the Maine National Guard who are employed pursuant to Section 90 of the National Defense Act of June 3, 1916 (32 U.S.C., sec. 42).

The Maine State Retirement System was inaugurated primarily for the benefit of State employees, Chapter 63-A, R. S., 1954, as amended. Section 2 of the Act provides:

"A Retirement System, as herein established, shall be placed under the Board of Trustees for the purpose of providing retirement allowances and other benefits under the provisions of this chapter for employees of this State. The Retirement System, so created, shall be considered to have been established July 1, 1947 for employees employed for the first time thereafter and for all employees who were eligible for the provisions of Sections 212 to 241, inclusive, of chapter 37 of the revised statutes of 1944; July 1, 1942 for all employees who were eligible for the provisions of chapter 60 of the revised statutes of 1944; and for all other employees the date on which contributions were first made by them to any retirement system supported in whole or in part by the State. It shall have the powers and privileges of a corporation and shall be known as the 'Maine State Retirement System,' and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received."

The word "employee" is defined in Section 1 of Chapter 63-A:

" 'Employee' shall mean any regular classified or unclassified officer or employee in a department, including teachers in the state teachers' colleges, normal schools and Madawaska training school, and for the purposes of this chapter, teachers in the public schools, but shall not in-