STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calender years

1961 - 1962

Question 2: May a nonresident's right to operate in this state be suspended if he does not hold a valid license in this or any other state?

Answer: As to the court "No." As to the Secretary of State, "Yes." The answer to question 1 answers this question so far as the court's authority is concerned. The law is very clear that the Secretary of State shall suspend the "right to operate" of a nonresident.

Question 3: May the right to operate or the right to obtain a license of a resident of this state who does not hold a valid license from this or any other state be suspended?

Answer: As to the court "No." As to the Secretary of State, "Yes." Again the answer to question 1 gives the answer as to the court's authority. The court may only suspend a license. It may not suspend the right to operate or the right to obtain a license. Such action is the function of the Secretary of State.

A question may arise as to the procedure to be followed by the municipal court in the event the violator is a nonresident or has no Maine license.

The wording of the first sentence of § 51-B gives ample authority to the court to forward the record of conviction to the Secretary of State for appropriate action even though the court cannot suspend the violator's license. Note the words "the court shall suspend the operator's license, *if any* . . . " (Emphasis supplied) It seems to follow that if there is no license for the court to suspend, that the record of conviction shall still be forwarded to the Secretary of State for appropriate action.

It is also to be noted that the Secretary of State can only act upon a recommendation by the court. Such recommendation is essential. Without it the Secretary of State can do nothing.

GEORGE C. WEST

Deputy Attorney General

May 21, 1962

To: Maynard F. Marsh, Chief Warden, Inland Fisheries and Game

Re: Micmac Indians

We are in receipt of your memorandum dated April 27, 1962, in which you state that a Micmac Indian from Canada has purchased a resident fishing license in this State on the theory that he is a citizen of North America and no particular state or territory therein, and therefore is entitled to a resident license. As you state in your memorandum, this is absurd.

In order to be considered a resident within the purview of the statutes requiring a fishing and/or hunting license one must be a domiciliary of the State of Maine. Obviously, a Micmac Indian from Canada is not a domiciliary of the State of Maine unless and until he sets up permanent residence in this State with an intent to remain here. The argument advanced that because the Indian is a citizen of North America he can have a resident hunting license in this State is fallacious inasmuch as he is bound by the laws of each State that he enters, just as we as American citizens are. All American citizens can travel without restriction from state to state within the United States. However, each and every one of us is bound by the laws of that particular state that we happen to

enter, and it is obvious that we could not get a resident license in any other state but Maine while still domiciling in Maine, even though temporarily residing in another state. A fortiori, an Indian entering this State from Canada or from another state within the United States is still bound by the laws of this State. In the instant case, the Micmac Indian is domiciled in Canada and is a nonresident of the State of Maine within the purview of the statute.

I call your attention to *State v. Cloud,* 228 N.W. 611; 179 Minn. 180 (1930) for a discussion of Indians, jurisdiction, and hunting and fishing. I also call your attention to *State v. Newell,* 84 Me. 465; 24 A. 943 (1892) in which the court states —

> "Whatever the status of the Indian tribes in the west may be, all the Indians, of whatever tribe, remaining in Massachusetts and Maine, have always been regarded by those States and by the United States as bound by the laws of the State in which they live," quoting *Danzell v. Webquish* 108 Mass. 133, and *Murch v. Tomer,* 21 Me. 535.
> The same rationale would apply to an Indian coming in from Canada.
>
> It also states — "Indeed, the defendant concedes that he is bound by all the laws of the state, except those restricting the freedom of hunting and fishing. As to these restrictive statutes, he contends they must give way as to him before certain Indian treaties named in the report of the cases."

There are no such treaties that would affect the case in issue, and the only statutory provisions covering this problem apply to Penobscot and Passamaquoddy Indians.

I include for your information the following passage in the *Newell Case* which states:

> "Though these Indians are still spoken of as the 'Passamaquoddy Tribe,' and perhaps consider themselves a tribe, they have for many years been without a tribal organization in any political sense. They cannot make war or peace; cannot make treaties; cannot make laws; cannot punish crime; cannot administer even civil justice among themselves. Their political and civil rights can be enforced only in the courts of the state; what tribal organization they may have is for tenure of property and the holding of privileges under the laws of the state. *They are as completely subject to the state as any other inhabitants can be. They cannot now invoke treaties made centuries ago with Indians whose political organization was in full and acknowledged vigor.*" (Emphasis added)

In view of the above, I wholeheartedly agree that these Indians are not entitled to a resident fishing and/or hunting license until they have satisfied the residency requirements of the State of Maine.

WAYNE B. HOLLINGSWORTH

Assistant Attorney General