

# MAINE STATE LEGISLATURE

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November 22, 1965

William T. Logan, Jr., Commissioner

Education

John W. Benoit, Assistant

Attorney General

Questions Arising Due to Amendment of Statutes Relating to the  
Schooling of Children Residing on Indian Reservations.

FACTS:

The 102nd Legislature enacted Chapter 450 which proposes to amend 20 M.R.S.A. § 1452 as follows:

"§ 1452. Children living on Indian reservations.

Non Indian ~~All~~ children children with less than 1/4 part of Indian blood who reside with parent or guardian on an Indian reservation shall be entitled to school privileges as described in sections 1453 and 1454, notwithstanding that these children do not reside in unorganized territory."

This provision does not become effective until July 1, 1966. At that time, the Act also proposes to repeal 20 M.R.S.A. § 4774 and § 4838. These latter sections appear in the statutes relating to the Department of Health and Welfare.

Soon, your Department will discuss the subject of the schooling of children on Indian reservations with the diocesan superintendent of schools, i.e., the person responsible for staffing the present schools on the reservations.

QUESTION #1:

As currently operated, are the reference schools (presently under the control of the Department of Health and Welfare) public schools?

ANSWER:

The answer to your question appears to have been given in an opinion to you dated August 28, 1964 by Frank W. Davis, Esquire.

QUESTION #2:

Since Chapter 450 will eliminate the one-quarter blood requirement of children living on reservations, may other non-Indian children (children residing outside the reservation) be assigned to school on the reservation?

ANSWER:

Yes, in the event that the Department of Education deems it advisable to maintain the schools on the reservation.

QUESTION #3:

Will it be necessary for the Commissioner of Education to continue the operation of schools on reservations?

ANSWER:

No.

QUESTION #4:

Can Indian children (elementary and secondary) be transported to public schools in towns adjoining the reservations?

ANSWER:

When 20 M.R.S.A. § 1452, as amended by P. L., 1965, c. 450 becomes effective, all children residing with parents or with a guardian on an Indian reservation shall be entitled to school privileges as set forth by sections 1453 and 1454 of Title 20. Section 1453 provides that transportation may be paid for elementary school pupils "at the discretion of the commissioner." No such similar provision exists in section 1454, regarding secondary school students.

QUESTION #5:

If Indian children are provided transportation to secondary schools, must they comply with the provisions of P. L. 1965, c. 272 (amending 20 M.R.S.A. § 911)?

ANSWER:

The supplying of transportation regarding the education of secondary school students is not a condition precedent to the application of P. L. 1965, c. 272.

QUESTION #6:

In the master plan currently under consideration pursuant to the provisions of P. L. 1965, c. 400, are the reservation schools to be included?

ANSWER:

No definite answer can be given. Children residing on the reference reservations are to be treated in the same manner as children residing in unorganized territories of the State.

QUESTION #7:

If the Maine Commissioner of Education continues to operate separate reservation schools within which the great majority of children in attendance are Indians, will the Commissioner be violating the civil rights act of 1964? Would the subject operation constitute a violation of the Commissioner's statement of compliance (form 441) filed with the United States Commissioner of Education?

ANSWER:

Unless the 'reservation schools' were open to general attendance, the noxious principle of "separate but equal" might well apply. Of course, the answer to this question (as well as to others herein) are made dependent upon a decision whether the subject schools are to remain in operation.

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John W. Benoit  
Assistant Attorney General

JWB/eh