

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

Yes ✓ ✓
April 14, 1966

Ronald T. Speers, Commissioner

Inland Fisheries and Game

John B. Wlodkowski, Assistant

Attorney General

Application of Resident Hunting License Requirements to Indians of the Passamaquoddy and Penobscot Tribes

FACTS:

A recent enactment of the 102nd Legislature now requires a resident over 10 years of age to procure a license in order to hunt wild birds and animals. If said resident is under 16 years of age, he is charged a one dollar (\$1.00) fee for the hunting license. Previously, only those residents over 16 years of age were obliged to obtain a hunting license for a stipulated fee.

Furthermore, under the present provisions of the Maine Statutes, any Indian of the Passamaquoddy and Penobscot Tribes may be issued a free license to hunt, trap and fish, providing said Indian is over the age of 16 years.

QUESTION #1:

Are Indians of the Passamaquoddy and Penobscot Tribes who are over the age of 10 years, required to procure a license?

ANSWER:

Yes.

OPINION:

The hunting license provisions of the Maine Statutes were recently amended to require a resident over 10 years of age to procure a license in order to hunt wild birds and animals. 12 M.R.S.A. § 2401 (2) (Supp. 1965). These amendments are incorporated in Chapter 319 and fall under the heading "Hunting and Trapping." Previous to these amendments, a hunting license was only required of those residents who were over 16 years of age. 12 M.R.S.A. § 2401 (2).

Under Chapter 317 entitled "Licenses Generally," any Indian of the Passamaquoddy and Penobscot Tribes who is over the age of 16 years may receive a hunting, trapping and fishing license without any charge or fee, providing that he present a certificate testifying to his being an Indian and a member of either tribe. 12 M.R.S.A. § 2301 (3) . The last sentence of said subsection further states that "[h]olders of such licenses shall be subject to all of the laws, rules and regulations of Chapters 301 to 335." Ibid.

In view of the fact that the licensing provision for Indians under Chapter 317 has been made expressly subject to the statutory sections of Chapters 301 to 335, which include the general licensing section of Chapter 319, as amended, it follows that should a conflict arise between these two licensing chapters, the sections of Chapter 319 would be controlling.

Therefore, in conformity with the legislative intent that Indian hunting license requirements are subject to the general laws of Inland Fish and Game, there being nothing expressed to the contrary, we find that the 102nd Legislature, by explicitly lowering the age level of residents required to carry hunting licenses, also implicitly lowered the age level of Indians for corresponding purposes.

Thus, we conclude from the foregoing that all Indians of the Passamaquoddy and Penobscot tribes who are over 10 years of age, must obtain a hunting license in order to hunt wild birds and animals.

QUESTION #2:

If Question #1 is answered in the affirmative, will said Indians be required to pay a fee of \$1.00 for a hunting license?

ANSWER:

No.

OPINION:

In requiring a hunting license for residents over 10 years of age, the Legislature has clearly stated that a fee of \$1.00 will be exacted for the issuance of said license, providing that the applicant is under 16 years of age. 12 M.R.S.A. § 2401 (3) (Supp. 1965). Whereas, under a pre-existing statute which was not subsequently amended, the Legislature has provided that Indians over the age of 16 years are to be issued a hunting license without charge. 12 M.R.S.A. § 2301 (3).

Since it has been determined in the opinion to Question #1 that Indians over 10 years of age will be required to apply for a license in order to hunt, it does not necessarily follow that they will be charged a fee of \$1.00 for their application, as in the case of resident hunters.

The Legislature, by enacting two hunting license sections, as outlined above, has manifested its intent to provide separate license classifications with distinct requirements and privileges. There is no reason to believe, then, that the Legislature intended to subsequently deprive the Indians of their special privileges by enacting laws lowering the age of those required to apply for a hunting license.

To literally construe the amendatory act as requiring Indians over ten years of age to pay a hunting license fee, would lead to the following absurd result: Indians between the ages of 10 and 16 years would be required to pay a fee for a hunting license while Indians over the age of 16 years would be granted said license gratis. Such a consequence can be avoided by the construction that the Legislature provided that Indians over 10 years of age were to carry licenses for hunting purposes, as is required of other residents; and, furthermore, that no fees would be charged for the issuance of said licenses to Indians over 10 years of age, in conformity with the present statutory regulation not to charge Indians over 16 years of age.

John B. Wlodkowski
Assistant Attorney General