

MAINE STATE LEGISLATURE

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No ✓
October 20, 1966

Edward C. Hinckley, Commissioner

Indian Affairs

George C. West, Deputy

Attorney General

The approaching elections of the Passamaquoddy Tribe have raised 3 questions.

QUESTION NO. 1:

Under existing statutes, would a non-Indian woman, married to a member of the Passamaquoddy Tribe, be eligible to vote in the Biennial Tribal Election?

ANSWER NO. 1:

No.

QUESTION NO. 2:

Under existing statutes, would a Passamaquoddy woman, married to a non-Passamaquoddy man or a non-Indian man, be eligible to vote in the Biennial Tribal Election?

ANSWER NO. 2:

Yes.

REASONS:

22 M.R.S.A. § 4831 states in the third sentence:
"Only certified members of the tribe who are 21 years of age or older shall be eligible to vote."

Section 4832 calls for "an accurate census of the Passamaquoddy tribe to be taken early each January by the tribal committee." The original "certified under oath" is given to the Commissioner of Indian Affairs and a copy to the Governor of the tribe.

Section 4701 defines an Indian "for all purposes as being a person who is in whole or to the extent of at least 1/4 part of Indian blood."

Hence, to be a member of the Passamaquoddy tribe the person must be, at least, an Indian. Hence, a white person cannot be a member of the tribe.

To be a "certified member of the tribe" the person must be on the tribal census and "certified under oath" on the list filed with the Commissioner and the tribal governors.

Therefore, a non-Indian woman is not eligible to vote, but an Indian woman married to a non-Passamaquoddy man or non-Indian is eligible if on the census list.

QUESTION NO. 3:

Is a member of the Penobscot tribe, living on a Passamaquoddy reservation eligible for any office set forth in section 4831?

ANSWER NO. 3:

No.

REASON:

The statutes fail to set forth any standards of eligibility for the offices listed in § 4831. This is undoubtedly a matter either of oversight or the legislature believed it was not necessary to set forth any standards.

The purpose of this section is to set up an election for partial self-government of the reservations. Being in the nature of self-government, it must be concluded that the legislature believed it to be unnecessary to establish standards of eligibility for tribal office holders.

It seems obvious that such office holders must be members of the Passamaquoddy tribe. To hold otherwise would allow anyone, Indian or non-Indian, to be a candidate.

In the case of the Passamaquoddy woman who married a Penobscot, she could well have dual tribal membership. She did not lose her Passamaquoddy tribal membership, though she may have gained membership in the Penobscot tribe, by the marriage. (22 M.R.S.A. § 4761, subsection 3).