

MAINE STATE LEGISLATURE

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December 21, 1966

Edward C. Hinckley, Commissioner

Indian Affairs

Peter T. Dawson, Assistant

Attorney General

Penobscot Lands

QUESTION #1:

May any person, other than a member of the Penobscot Indian Tribe, inherit land on Indian Island, Old Town, or on any other island in the Penobscot River set aside for the tribe, either by will or by descent under the laws of intestate succession?

ANSWER #1:

No.

QUESTION #2:

Is approval of the Commissioner of Indian Affairs required for the passage of title to such lands by devise or descent (similar to the approval required for conveyance under Title 22, M.R.S.A. § 4777?)

ANSWER #2:

Yes.

OPINION:

22 M.R.S.A. § 4777 in salient part states:

"Any Indian holding lands under a certificate issued under authority of chapter 137 of the Public Laws of 1883, or by virtue of any assignment under the laws for the apportionment of the lands of said Penobscot tribe, may sell and convey the same

to any member of the same tribe with the approval of the Commissioner. . . ."
22 M.R.S.A. § 4777.

It is our opinion that the above restriction on the alienation of lands among the Indians of the Penobscot Tribe applies equally to intervivos transfers, transfers by will or transfers under the laws of intestate succession.

The nature of the interest held by an assignee or recipient of lands under 22 M.R.S.A. § 4777 is a fee simple determinable. This determinable fee is descendable and devisable to the same extent as a fee simple. However, the determinable quality of the interest continues to a subsequent transferee. John v. Sabattis, 69 Me. 473, 476. Therefore, a transferee of these lands can take no greater interest than that of the transferor. The Legislature has decisively declared that these lands can be conveyed only to members of the same tribe. The word "convey" denotes any transfer of legal or equitable title. Accordingly, the determinable quality of the interest in the lands referred to in 22 M.R.S.A. § 4777 applies irrespective of whether the interest is transferred by virtue of the laws of intestate succession, by will or by intervivos means.

In view of our interpretation of 22 M.R.S.A. § 4777 outlined above, it is further our opinion that the Commissioner's approval is required for the passage of title to such lands whenever there is an attempt to transfer such title by devise, descent or intervivos conveyance.

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PTD/slf