

# MAINE STATE LEGISLATURE

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April 21, 1967

Edward C. Hinckley, Commissioner

Indian Affairs

Jerome S. Matus, Assistant

Attorney General

Indian Constables

FACTS:

By memo dated April 18, 1967, you furnished me with the following information:

At a meeting of the Pleasant Point Tribal Council, held on March 4, Mr. Joseph Paul was appointed to fill one of two vacancies as Pleasant Point Indian Constable. Mr. Paul is a Malecite Indian who has lived on the Reservation for the past six years at least. In spite of Mr. Paul's not being a member of the Pleasant Point Passamaquoddy Tribe, it was felt that he would be eligible for appointment under the statutes - 22 M.R.S.A. § 4716, (1).

At a meeting of the Pleasant Point Tribal Council, held on March 29, the names of four candidates were brought up for the other vacancy as Pleasant Point Indian Constable. The six-man Tribal Council voted on the candidates; two candidates received 3 votes each. One of these candidates was Mr. Newell Tomah. Tribal Governor Joseph Mitchell announced that Mr. Tomah was thereby appointed Constable.

A certificate of appointment was signed by the Tribal Governor and Council on the 29th, concerning both appointments.

On April 17, Governor Joseph Mitchell informed me that he had been requested to attend a meeting of the Tribal Council on Saturday, April 15. He reported to me that he had attended and that the Council had voted 6-0 in favor of removing Mr. Paul and Mr. Tomah from their positions and had also voted 6-0 in favor of appointing Mr. Robert Newell and Mr. Melvin Francis in their place.

Governor Mitchell informed me that Mr. Paul had been present during the meeting and that Mr. Tomah had arrived after the meeting was over. He could report no official reason for the Council's action against Mr. Tomah; he said there had been some criticism of Mr. Paul's appointment on the grounds that he was not a member of the Tribe or a United States citizen.

Governor Mitchell requested that I seek advice from your office into these matters. Both Mr. Paul and Mr. Tomah have completed the contracts of employment necessary for this Department to pay them by monthly checks.

QUESTION #1:

Was Mr. Paul, a Malecite Indian, eligible for an appointment as a special constable for the Pleasant Point Indian Reservation of the Passamaquoddy Tribe?

ANSWER #1:

No.

OPINION #1:

The appointment of Indian Constables is governed by 22 M.R.S.A. § 4716, (1), which provides as follows:

"1. Appointment. The tribal governor, with the advice and consent of the tribal council, is authorized to appoint one or more reliable Indians, in each of the Indian tribes in this State, as special constables with like powers and duties of constables and police officers within towns and cities, in the enforcement of the laws of the State, within the limits of the reservation of his tribe, with authority to take any offender before any court of competent jurisdiction within his county. Such constables shall act as school attendance officers for their respective tribes. They shall receive such compensation as may be determined by the department." (Emphasis supplied.)

An Indian Constable for the Pleasant Point Indian Reservation must be a Passamaquoddy Indian. The status of an individual as a Passamaquoddy Indian would be established if he were properly listed on the census list as provided by 22 M.R.S.A. § 5832.

The term "in each of the Indian tribes" within the context of 22 M.R.S.A. § 4716 (1) means "a member of each of the Indian tribes."

This conclusion is substantiated by the use of the term "his tribe" in the reference statute. This conclusion is further substantiated by the language of the reference statute which states: "Such constables shall act as school attendance officers for their respective tribes." We cannot construe this language to mean that an Indian who is not a Passamaquoddy can act as a constable for the Passamaquoddy Indians.

QUESTION #2:

Does the Tribal Council's action in favor of appointing Mr. Robert Newell and Mr. Melvin Francis constitute those gentlemen as legally appointed constables?

ANSWER #2:

No.

OPINION #2:

22 M.R.S.A. § 4716, (1) imposes the duty of appointment upon the Tribal Governor. If, and only if, the Tribal Governor appoints can the Tribal Council consent.

The Tribal Council prior to the appointment can advise the Tribal Governor as to whom they believe would be qualified to act as a constable. Once the Tribal Governor makes an appointment, the Tribal Council must consent before the appointee can be a special constable. The Tribal Council can consent by a majority vote, which in the instance of a 6-man Tribal Council would be 4 Council votes.

The Tribal Governor in making his appointment should appoint one individual for one position and the Tribal Council must pass favorably on that individual's qualifications before that individual may be legally considered a special constable.

QUESTION #3:

Was the procedure followed in the selection of Newell Tomah proper so as to constitute appointment of Newell Tomah as a constable?

ANSWER #3:

No.

**OPINION #3:**

The procedure in Opinion #2 is the proper procedure. In other words, following the nomination of an individual by a Tribal Governor, the Tribal Council must vote "Yes" or "No" on that individual to indicate its consent or rejection. As stated above, the consent must be by majority vote of at least 4 members of the Tribal Council.

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**Jerome S. Matus**  
**Assistant Attorney General**

JSM/eh