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October 3, 1967

Edward C. Hinckley, Commissioner

Indian Affairs

Phillip M. Kilmister, Assistant

Attorney General

22 M.R.S.A. § 4834 Sales of Timber; improvement fund.

FACTS:

We appreciate your recitation of certain statutory enactments in your memo of July, 1967 which constituted the prior law relating to the disposition of the proceeds of sales of timber and grass in Indian Township, and which law is now set forth as 22 M.R.S.A. § 4834.

It would appear that trust fund A (Passamaquoddy tribe trust fund) among other purposes, may be used for the construction of housing. The Legislature has twice in recent years directed the trustees of fund A to expend funds for housing. The legislature has further stated that when this is done, the total amount of funds expended for housing must be repaid into the tribal trust fund from the net proceeds derived from the sale of timber and grass on Indian Township. Only when this repayment is made may the net proceeds from sales be deposited in trust fund B (Improvement Fund). The Legislature has provided that the Department of Indian Affairs shall utilize funds in trust B to pay a levy to the Maine Forestry Service "on the basis of 6¢ per acre per year for all lands within Indian Township not already paying a Maine Forestry District tax for the prevention, control and extinguishment of forest fires."

The problem is obviously that when considerable expenditures of tribal trust funds (\$180,000) have been made for housing, the net proceeds of sales of timber and grass may not equal, for a long period of time, the amount of said expenditures. Since the total expenditure of tribal trust funds for housing must be replaced out of net proceeds before any net proceeds, may be deposited into trust fund B (Improvement Fund), there may be no funds available in trust fund B with which to pay the Maine Forestry District levies. It is not stated in your memo whether or not the funds of trust B are depleted but we do not deem such a fact essential in order to answer the questions posed. Prior to August 28, 1957 the net proceeds from sales of timber and grass went directly into trust fund B unless

at the end of any fiscal year the sum of said trust fund exceeded \$10,000, in which case the excess over \$10,000 would be added to trust fund A. Since August 30, 1957 the law provides that net proceeds from sales shall be placed in trust fund A until all funds expended from trust fund A for housing have been repaid, and then said net proceeds are to be deposited in trust fund B.

QUESTION #1:

Has the payment in lieu of Maine Forestry District taxes, since August 28, 1957, been improper in that the improvement fund from which these payments were to be made was effectively eliminated by P. L. 1957, c. 162, until such time as the amount expended for housing be repaid to the trust fund from the net proceeds of timber sales?

QUESTION #2:

Should these payments that have been made therefor be returned to the Passamaquoddy tribe trust funds?

ANSWER:

We answer both questions in the negative.

OPINION:

The obligation to pay levies to the Maine Forestry District is not eliminated simply because the designated fund from which such obligation is to be paid no longer exists. If it cannot be paid out of the Improvement Fund designated in 22 M.R.S.A. § 4834 it would appear that such obligation could be paid out of the Passamaquoddy tribal trust funds referred to in the same statutory section.

Were it not for the expenditure of permanent tribal trust funds for housing, funds would exist in the Improvement Fund with which to pay levies owed to the Maine Forestry District. We do not believe that the legislature can eliminate the obligation to pay a levy or tax simply by eliminating a particular trust fund from which the payment of such a levy or tax is contemplated.

The source of money for payment of a levy or tax to the Maine Forestry District is the profit derived from sales of timber and grass in Indian Township, and not the particular fund or depository into which such profits are placed.

22 M.R.S.A. § 4834 Sales of Timber; improvement fund, reads in part as follows:

"The net proceeds from such sales (timber and grass) shall be placed in the Passamaquoddy tribe trust funds until a sum equal to that used from said trust funds for housing has been placed therein then the net proceeds shall be set up in the State Treasury as an Improvement Fund for the reservations of the Passamaquoddy tribe of Indians to be expended with the approval and under the direction of the department. In the event the balance in said Improvement fund shall at the end of any fiscal year exceed the sum of \$10,000, the excess over \$10,000 shall be added to the permanent trust funds of said tribe. From said Improvement Fund the department in charge shall make payment to the Treasurer of State to be allotted the Maine Forestry District in lieu of taxes on the basis of 6¢ per acre per year for all lands within Indian Township not already paying a Maine Forestry District tax for the prevention, control and extinguishment of forest fires."

Prior statutory language as well as the existing language of 22 M.R.S.A. § 4834 quoted above reveal the intent of the legislature that all net proceeds from the sale of timber and grass shall be placed in an Improvement Fund up to an amount of \$10,000 in any fiscal year, except where permanent tribal trust funds have been expended for housing, in which case, net proceeds shall first be used to replenish any permanent trust funds so used.

We do not read 22 M.R.S.A. § 4834 to mean that tribal trust funds must not be expended for necessary or beneficial obligations until all prior expenditure of such funds for housing have been repaid out of net proceeds from sales of timber and grass however.

22 M.R.S.A. § 4714 entitled Expenditure of tribal funds, reads as follows:

"The department, subject to the approval of the Governor and Council, may expend for the benefit of either Indian tribe, any portion of the funds of that tribe, provided the expenditure will not decrease the principal of the fund to such an extent as to prevent compliance with any existing statute, and provided the tribe whose funds are used shall consent to the expenditure at a meeting duly called for the purpose."

It is clear that even though the net proceeds from the sale of timber and grass do not equal the amount of trust funds expended for housing, that the trustees may still expend funds for the benefit of the tribe. Certainly the expenditure of trust funds for the payment of tribal debts imposed by statute stand on no less footing.

The legislature and the trustees may provide that tribal trust funds shall be expended for housing. By choosing to make net proceeds of sales of timber and grass payable to the permanent tribal trust fund, rather than the Improvement Fund, until all such permanent trust funds expended for housing have been repaid, we believe that the legislature has in effect merged the obligations of the Improvement Fund into that of the trust governing the use of permanent tribal funds.

Neither the legislature nor the trustees may divert or eliminate the source of funds for one trust, for the benefit of another, unless the diversion or elimination of funds carries with it a transfer of the obligations imposed upon such trust.

We therefore conclude that the payment of Maine Forestry District levies from permanent tribal trust funds is entirely proper.

Phillip M. Kilmister
Assistant Attorney General

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