

# MAINE STATE LEGISLATURE

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December 22, 1967

Edward C. Hinkley, Commissioner

Indian Affairs

Phillip M. Kilmister, Assistant

Attorney General

Power of Indian Tribes to provide Workable Programs and Minimum Housing Code Requirements Acceptable to the Department of Housing and Urban Development.

FACTS:

The United States Housing Act of 1949 as amended provides as a prerequisite for either a preliminary loan contract or an annual contributions contract for low rent housing by the Department of Housing and Urban Development, that a municipality submit a so-called "Workable Program and Minimum Housing Code." Section 101 (c) of the Housing Act as set forth in 42 U.S.C.A. § 1451 provides that in regard to Indian tribes such "Workable Programs and Minimum Code standards" are required only if such tribes have the legal jurisdiction and power to carry out such requirements. You have asked two questions relative to the power of the Penobscot and Passamaquoddy Tribes to enact and enforce such programs and codes.

QUESTION #1:

Do the Passamaquoddy and Penobscot Tribes possess, under 22 M.R.S.A. § 4717, the necessary legal jurisdiction and power to deal with and carry out the Workable Program and Minimum Code requirements ordinarily required from municipalities?

ANSWER:

No.

QUESTION #2:

If not, do you as Attorney General, consider it advisable to attempt to secure necessary legislation conferring such powers, at the present time?

ANSWER:

This is strictly a political query to be resolved by the Legislature.

OPINION:

We agree with the conclusions stated in the letter authored by Mr. Herman D. Hillman, Regional Administrator for the Department of Housing and Urban Development which accompanied your memorandum of December 1, 1967, which state that the Indian tribes in Maine do not possess the power to enact and enforce housing ordinances or work programs related thereto.

Chapter 513 of the Public Laws of 1965 now 22 M.R.S.A. § 4717 gives to the Passamaquoddy and Penobscot tribes seemingly broad power to enact and enforce ordinances, and rules and regulations governing tribal activity.

"The Governor and Council of the Penobscot Tribe and of the Passamaquoddy Tribe of Indians shall prepare the ordinances, rules and regulations for such tribe after a hearing held at a special meeting of such tribe called for the purpose. Said ordinances, rules and regulations shall be submitted for approval by the tribe at a general meeting called by the Governor. Such ordinances, rules and regulations shall be enforced by the constables of the tribe under the supervision and direction of said Governor and Council."

We believe the Legislature did not give the tribes the power to enact and enforce ordinances which substantially affect the use of land such as municipal housing codes however.

"It has become settled law, that even the territory and soil of the small districts, to which the Indians resident in Maine are now reduced, in their occupation, is not absolutely their's in fee since they are prohibited from alienating and even the use and improvement of it is not left to their entire control." Murch v. Tomer, 21 Me. 535 (1842) (Emphasis supplied)

"While the Indians presently resident in this State have a partial organization for tenure of property and local affairs, they have no separate political organization, and they are subject as

individuals to all of the laws of the State." (Emphasis supplied) State v. Newell, 84 Me. 465, 22 A. 943 (1892).

Municipalities, although creatures of the legislature, are separate and distinct governmental bodies and may be empowered to enact ordinances to carry out broad police powers. This may include the power to regulate the use of land within their borders and even the power of condemnation of said land. Clearly, the Indian tribes do not possess such power.

Had the legislature intended to give to the tribes the power to enact zoning ordinances or housing codes affecting the use of lands within their respective reservations, we believe the legislature would have specifically delineated by statutory language the power to enact such codes. Such powers affecting the use and regulation of land cannot be reasonably implied.

Phillip M. Kilmister  
Assistant Attorney General

PMK/slf