

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

March 20, 1968  
Secretary of State

Stanley F. Hanson, Jr., Deputy

Registration of Voters in Indian Voting Districts

The question which Commissioner Hinckley of the Department of Indian Affairs has asked of you, is basically the following:

*QUESTION:*

May a Reservation Chaplain who resides on a Reservation register and vote in an Indian Voting District?

*ANSWER:*

No.

*OPINION:*

In an opinion of this office rendered on September 6, 1955 it was held that white persons and Indians who were non-citizens could not vote on the respective reservations. The wording of subsections 4 and 5 of section 1622 of Title 21 of the Revised Statutes (Indian Voting District Law) leads to an affirmation of this opinion.

It is true that the statutory language of subsection 4, standing alone, is clearly broad enough in scope to include the registration of all residents duly qualified to vote, whether they be Indians or not. Subsection 5 designates rather clearly that the registration commissioner of each Indian voting district shall register only "Indian voters", however.

Reading subsections 4 and 5 conjunctively, we believe the Legislature did not contemplate the registration of non-Indian voters within Indian voting districts.

PHILLIP M. KILMISTER  
Assistant Attorney General

March 28, 1968  
Water and Air Environmental  
Improvement Commission

George C. Gormley, Civil Engineer

Eligibility of Pleasant Point Passamaquoddy Reservation Housing Authority for WAEIC aid under 38 M.R.S.A. § 411 (1964).

*FACTS:*

The Pleasant Point Passamaquoddy Reservation Housing Authority created by 22 M.R.S.A. § 4733 (Supp. 1968) proposes to construct a pollution abatement facility. The Authority has received federal approval of its proposed project and federal funds in aid of construction. The Authority now applies to the Water and Air Environmental

Improvement Commission for additional funds believed available under the provisions of 38 M.R.S.A. § 411 (1964). Such funds are available to federally approved and funded quasi-municipal pollution abatement construction programs. 22 M.R.S.A. § 4738 (Supp. 1968) empowers the State to grant funds to Indian housing authorities.

**QUESTIONS:**

1. Is the Authority's pollution abatement program a "quasi-municipal" program eligible for WAEIC aid under 38 M.R.S.A. § 411 (1964)?
2. Do the provisions of 22 M.R.S.A. § 4738 (Supp. 1968) restrict the source of state funds for the Authority to those funds which have been specifically appropriated and earmarked by the Legislature for the Authority, or may the Authority also tap the state funds available under 38 M.R.S.A. § 411 (1964) if its pollution abatement program is otherwise qualified for such aid?

**ANSWERS:**

1. Yes. The Authority is by statute a "public body corporate and politic." 22 M.R.S.A. § 4733 (Supp. 1968). The language of 22 M.R.S.A. § 4732 (Supp. 1968) clearly indicates that Indian housing authorities were intended to be, in the language of a North Dakota court, "public corporation(s) for public purposes." *Ferch v. Housing Auth. of Cass County*, 79 N. D. 764, 59 N. W. 2d 849, 865 (1953). Further, as was well put by a New York Court, "(t) he very name, authority, given to this type of public corporations imports a distinct historical connotation of separateness and judicial distinction from the State and from . . . municipal corporations. . . ." *Ciulla v. State*, 191 Misc. 528, 77 N.Y.S. 2d 545 (1948).

We conclude that the pollution abatement programs of the Authority may be considered as "quasi-municipal" for the purposes of applying 38 M.R.S.A. § 411 (1964).

2. We do not believe that the language of Title 22, § 4738 was intended to bar the Authority from an award of WAEIC funds under Title 38, § 411. Section 4738 is not a restrictively worded section. It might be well to quote the pertinent portion of the section at this point:

"In addition to its other powers, the State is empowered to provide facilities, services and financial aid, by loan, donation, grant, contribution and appropriation of money; or by any other means, to an authority . . . ."

Reading this section in conjunction with section 4732, it is clear that the aim of the Maine Indian Housing Authorities Act was to relieve the abysmal housing conditions existing on the Indian reservations, and to employ state funds to pursue this aim. Section 4738 was not intended to limit the source of such funds, but rather to make clear in general terms that the State would finance and otherwise aid the Indian housing authorities. In this regard, it might be well to quote Holmes: "The general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down." *International Stevedoring Co. v. Haverly*, 197 U. S. 135 (1905). It would seem inconsistent with the purpose of the Act, plainly expressed in section 4732, to find that section 4738 limits the State funds available to the Authority to those which have been specifically appropriated for it. If the Authority can qualify, as any other quasi-municipal corporation may qualify, through the WAEIC for state aid in the form of funds allocated by the State for distribution by the WAEIC to qualified quasi-municipal pollution abatement

programs, there seems to be no good reason why the mere fact that other state aid is also available should bar the Authority from a section 411 award.

ROBERT G. FULLER, JR.  
Assistant Attorney General

April 4, 1968  
Education

Hayden L. V. Anderson, Executive  
Director, Div. of Professional Services

Proposed Employment of Commission Member by Study Group Employed by Commission.

*FACTS:*

The State Board of Education acting as the Maine State Commission for the Higher Education Facilities Act of 1963, (sometimes referred to hereafter as the "Commission"), pursuant to the provisions of P. L. 1967, c. 292 (20 M.R.S.A. §§ 2720-2721), is preparing a contract with the Institute for Educational Development, a non-profit, non-stock New York corporation, for the purpose of securing a study of Maine's higher education institutions under the comprehensive planning grant program of the Federal Act.

Presently, the New York corporation is in the process of recruiting Maine people to supplement the corporation's out-of-state staff; and the corporation has indicated a desire to employ Mrs. Jean Sampson of Lewiston as a consultant on a day-to-day basis at a fixed fee per day. Mrs. Sampson is willing to accept such an assignment. Presently, Mrs. Sampson is a member of the State Board of Education.

*QUESTION:*

Whether or not a member of the State Board of Education acting as the Maine State Commission for the Higher Education Facilities Act of 1963 may be employed by a study firm which will contract with the State Board, without creating a conflict of interest?

*ANSWER:*

If the given employment takes place, a conflict of interest will result.

*REASON:*

The Commission referred to in the given facts is, together with the aforementioned New York entity, presently preparing a contract in which the New York corporation will undertake a planning study for presentation to the State. So far, the subject Commission member is only involved with one side of that contract, i.e., as a member of the Commission hiring the New York entity in order to secure planning services. When such member becomes employed by the New York entity, remuneration will be paid the member by the New York entity; and by reason of that fact, the member would possess positions of interest on both sides of the contract simultaneously.

(NOTE: Because the contract is still in the drafting stage, this office has not been