

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

April 5, 1968

Edward C. Hinckley, Commissioner

Indian Affairs

Phillip M. Kilmister, Assistant

Attorney General

Economic Planning for Maine Indians.

In your memorandum of March 8, 1968 submitted to this Office, you asked four questions relative to economic planning for Indians.

QUESTION #1:

1. Can the two Passamaquoddy Tribal Councils (Pleasant Point and Indian Township) individually and/or jointly request the D.E.D. to prepare an application for a planning grant from the Department of Housing and Urban Development and, in this way, act as a "Planning Board?"

ANSWER #1:

Yes, until April 26, 1968.

QUESTION #2:

2. Can the two Passamaquoddy Tribal Councils delegate this "Planning Board" responsibility to the Passamaquoddy Tribal Councils' Community Action Program Board of Directors, which is composed of representatives of both reservations and responsible to both Passamaquoddy Tribal Councils?

ANSWER #2:

Yes.

QUESTION #3:

3. If such delegation is possible, can it be as an additional duty of the Community Action Program Board, by resolution, etc., or would the entire Community Action Program Board need to be additionally designated as the Tribe's "Planning Board?"

ANSWER #3:

If the responsibility for carrying out economic planning is clearly vested in the Community Action Program Board, it is immaterial whether or not said Board is designated by name as the Tribe's "Planning Board."

April 5, 1968

QUESTION #4:

4. Would there be any problem in the fact that the two Tribal Councils, as well as the Community Action Program Board, include elected officials of the Tribe in their memberships?

ANSWER #4:

No.

OPINION:

We state with brevity the answers to questions numbered two, three, and four simply because there are no express provisions in our statutes governing the type of a planning agency which Indian tribes must establish, nor is there any statutory law governing the composition of membership of such planning agencies or boards. We do not believe that the vesting of so-called "Planning Board" responsibility in the Tribal Councils' Community Action Program Board of Directors is violative of either the letter or spirit of any of the existing law governing local planning.

In regard to question numbered one, under date of March 30, 1965, this office gave an opinion to the Department of Economic Development which held that the "D.E.D. was the proper state department to apply for federal funds under the so-called 'section 701 program' of the Federal Housing Act of 1954 as amended, for the purpose of planning for Indian Reservations. This opinion was largely based upon the language of 10 M.R.S.A. § 451 (8) which vested in the Division of Research and Planning of the Department of Economic Development the authority to 'assist in planning and executing any public or private project involving federal grants or loans.'

It is of prime importance to note that P. L. 1967, c. 533, recently enacted during the special session of the 103rd Legislature, repealed this particular statutory language as well as subsections 6 and 7 of 10 M.R.S.A. § 451 and transfers the planning functions of the Division of Research and Planning in the D.E.D. to the newly-created State Planning Office.

April 3, 1968

The powers of the State Planning Office as set forth in section 1 of P. L. 1967, c. 533 (5 M.R.S.A. § 3305 (f) include the following:

"Assistance to public or citizens groups. The State Planning Office may assist in planning and executing any public or private project involving grants or loans; advise, confer and otherwise cooperate with municipal planning boards, agencies, officials, civic and other groups and citizens in matters relating to urban renewal, zoning and planning relating to schools, housing, health, land use controls and other objectives."

The planning power designated by the above-quoted statutory language is analogous to the power formerly vested in the Division of Research and Planning of the D.E.D. as set forth in 10 M.R.S.A. § 451 (8).

The newly-created State Planning Office clearly has the authority to apply for funds from the Federal Government and agencies thereof in order to assist and carry out planning projects. P. L. 1967, c. 533, section 1 (5 M.R.S.A. § 3305 (2) D provides as follows:

"Acceptance of funds. Funds from the Federal Government or from any individual, foundation or corporation may be accepted by the State Planning Office and expended for purposes consistent with this chapter."

In conclusion it would appear that the Passamaquoddy Tribal Councils' Community Action Program Board of Directors, or any other planning board created by the Tribal Councils, prior to April 26, 1968, may apply through the D.E.D. for a planning grant from the Department of Housing and Urban Development. Thereafter, such applications for planning grants should be solicited through the State Planning Office.

Phillip M. Kilmister
Assistant Attorney General