

# MAINE STATE LEGISLATURE

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July 2, 1968

Edward C. Hinckley, Commissioner

Indian Affairs

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Attorney General

Tribal Constable; Minimum Age Limit.

SYLLABUS:

A minor is not eligible for appointment to the office of tribal constable.

FACTS:

Because of recruitment problems on the Pleasant Point Reservation, it has been suggested that a person under 21 years of age be appointed as tribal constable on the Reservation. The position of tribal constable was provided for in 22 M.R.S.A. § 4716.

QUESTION:

Whether or not a minor is eligible for appointment to the office of tribal constable?

ANSWER:

No.

REASONS:

Although the language of 22 M.R.S.A. § 4716 establishes the office of tribal constable, none of the language in that section relates to the instant question. Too, none of the provisions of the Maine Revised Statutes, or provisions of the Constitution of Maine, assist in arriving at a conclusion to the given question.

The text in 43 C.J.S., Infants §24, acknowledges that at common law, infants were eligible to hold offices which were ministerial in their character; but that infants were not eligible to hold judicial offices or offices calling for the

discharge of discretion and experience.

In Golding's Petition, 57 N.H. 146, 24 Am. R. 66, a question was raised whether a minor could hold the office of Justice of the Peace. The Court there determined that an infant could not hold the office of Justice of the Peace. The Court rested its decision upon the fact that minors may hold offices which were merely ministerial, requiring nothing more than an exercise of skill and diligence. Those offices where judgment, discretion and experience were essentially necessary to the proper discharge of the duties which the offices imposed were, the Court remarked, not to be entrusted to infants. These general rules were based upon "the soundest principles governing the administration of justice." Ibid.

The case of Golding's Petition, supra, cited an earlier New Hampshire case, Moore v. Graves, 3 N.H. 408. This latter case was concerned with the question whether or not an infant may legally hold the office of Deputy Sheriff. The Court said that the appointment of an infant as Special Deputy Sheriff made him an officer de facto only. The decision in that case contains the following language:

"Upon a thorough examination of the adjudged cases, which bear upon the question we are now considering, we are satisfied that the principle they establish, is, that some offices can, and some cannot, be held by infants. Offices, where judgment, and discretion, and experience are essentially necessary to the proper discharge of the duties they impose, are not to be entrusted in the hands of infants. But they may hold offices, which are merely ministerial, and which require nothing more than skill and diligence." Moore v. Graves, supra. p. 412.

In the case entitled The New Albany and Salem Railroad Company v. Grooms, 9 Ind. 243, the Court determined that an infant may be deputed to serve a particular writ, but that

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an infant could not act as a general deputy sheriff.

In 42 Am Jur, Public Offices, § 44, it is recognized that although all persons are normally considered to be qualified to hold public office, it is nevertheless true that age may present an obstacle to the holding of any public office. The reference text announces that: "Both the common law and the Constitutions and Statutes recognize that it is contrary to sound public policy to commit certain offices to the inexperience of the young\*\*\*".

On the strength of the above authorities, we conclude that a minor is not eligible for appointment to the office of tribal constable. Our position is grounded upon the common law principle that any such appointment would be contrary to sound public policy because the office of tribal constable is one involving more than ministerial duties. We view the office of tribal constable as one requiring the exercise of judgment, discretion and experience. Golding's Petition, supra; Moore v. Graves; and New Albany and Salem Railroad Company v. Grooms, supra.

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JWB/p