

MAINE STATE LEGISLATURE

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October 24, 1968

Edward C. Hinckley, Commissioner

Indian Affairs

Jerome S. Matus, Assistant

Attorney General

Passamaquoddy Insurance Settlement - Indian Township Tribal Hall

SYLLABUS:

Funds from the Reserve Fund for Uninsured Losses and insurance proceeds allocated to replace destroyed property may be carried forward by the Maine Department of Indian Affairs to a subsequent biennium.

FACTS:

The State of Maine carried insurance on a Tribal Hall at Peter Dana Point on the Indian Township Reservation, which hall collapsed due to storm damage on March 5, 1967.

On August 16, 1967, the Maine Insurance Advisory Board informed the Department of Indian Affairs and the State Controller that the Department of Indian Affairs was entitled to the amount of \$1600 for this loss to the hall which sum was to be credited to Account No.2610, Activity 30, Character & Object 2832. The Governor of the State of Maine approved the use of this \$1600 for the replacement of the Tribal Hall. The \$1600 was composed of \$263.29 from the Reserve Fund for Uninsured Losses and \$1336.71 as insurance proceeds from the insurance company that insured the Tribal Hall.

The \$1600 was carried forward to the 1968-69 fiscal year as replacement plans for the Tribal Hall had not been finalized. The Department of Indian Affairs now desires to use this sum of money to replace the Tribal Hall during the 1969-71 biennium.

QUESTION:

May the Department of Indian Affairs legally carry forward the \$1600 allocated to replace the Tribal Hall from the present fiscal year to the next biennium, i.e., the 1969-71 biennium?

ANSWER:

Yes.

REASON:

The Public Laws of 1965, Chapter 514, now 5 M.R.S.A. §§ 1711 - 1723, relates to insurance on State owned property. 5 M.R.S.A. § 1714, subsection 6, provides that:

"Whenever property has been destroyed, the money paid by the insurance companies on the loss shall, with the approval of the Governor, be made immediately available for replacing the destroyed property."

Thus it is clear that our Legislature intended that the insurance proceeds received as a result of losses to property insured by the State be used for replacing the destroyed property.

5 M.R.S.A. § 1721 in referring to the Reserve Fund for Uninsured Losses provides that:

"The fund shall be administered by the Commissioner of Finance and Administration subject to the approval of the Governor. The fund shall be a continuing fund and shall not lapse and shall be used only for the payment of uninsured losses as a result of deductible insurance coverages under the State fire insurance program."

Thus it is equally clear that the reserved fund for uninsured losses is a continuing fund. Hence, the reserve fund can be brought forward to a subsequent biennium because of the legislative direction that the fund is continuing and shall not lapse. We are of the opinion that payments of insurance proceeds as well as payment from the Reserve Fund for Uninsured Losses must also be of a continuing nature and cannot lapse. If such were not the case, a failure to use the insurance proceeds within a biennium would result in a lapsing of the insurance proceeds in contradiction to the expressed intent of 5 M.R.S.A. § 1714, subsection 6, that funds be made immediately available for replacing the destroyed property.

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