

MAINE STATE LEGISLATURE

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December 18, 1968

Edward C. Hinckley, Commissioner

Indian Affairs

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Tribal Constables.

SYLLABUS:

Where a statute prescribes a designated term of years during which an appointed official shall serve, said term of years may not be altered by the appointive authority.

FACTS:

Indian constables are appointed for two year terms or until their successors are duly appointed and assume office. (22 M.R.S.A. § 4716). Appointment is by the respective Tribal Governors and Councils. Said Governors and Councils were formerly elected biennially with the commencement of their terms of office being January 1st of the odd numbered years. Now, legislative amendments have changed this designated date for commencement of terms and presently Tribal Governors and Councils are elected biennially to terms which commence on October 1st of even-numbered years. Tribal Governors and Councils were recently elected for two year terms which began on October 1, 1968. The argument has been advanced that recently elected Tribal Governors and Councils could appoint new constables to succeed those presently holding office and appointed to two year terms by previous Governors and Councils.

QUESTION:

Would a Constable appointed on April 1, 1969 be authorized to serve until March 31, 1971, unless dismissed as provided in § 4716 or unless he resigned, regardless of any actions taken by the Tribal Governor and Council which takes office on October 1, 1970?

ANSWER:

Yes.

REASON:

The designated term of years which an Indian Constable may serve is specifically set forth by statute and said term of years cannot be altered by the appointing authority, to wit: the Tribal Governor and Council.

22 M.R.S.A. § 4716 (para. 2) provides as follows:

"Term of office. Said constables shall be appointed for a term of 2 years from the date of their appointments or until their successors have been duly appointed and qualified. Any constable may be removed by the tribal governor upon recommendation of the department."

The above-designated two year period represents the minimum amount of time which a constable is entitled to serve from the date of his appointment, absent the occurrence of unforeseen contingencies, such as removal for cause, or death.

"The word 'term', when used in reference to tenure of office, means ordinarily a fixed and definite time, that is, a specific period of time during which an incumbent is certain of holding the position, providing the position itself be not abolished by the creating power." State ex rel Ferris v. Bish, 22 Ohio Dec. 480. (emphasis supplied)

"The word 'term' in a legal sense means the fixed and definite period of time which the law prescribes that an officer may hold office, and a holding over does not change the length of the term, but merely shortens the term of his successor." Wilson v. Shaw, 194 Iowa 28, 188 N.W. 940.

In order to make the terms of constables concurrent with the terms of the appointing Governor and Council, a change in the language of 22 M.R.S.A. § 4716(2) would appear to be necessary.

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PMK: vhw