STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For the Years
1967 through 1972

solicitation, offer and acceptance and the payment of premiums by mail, without more, constituted the "doing of business" for the purpose of jurisdiction to regulate.

Further, the *Opinion of the Attorney General,* May 19, 1969, which concerned the effect of 36 M.R.S.A. §2513 as to the taxability of mail order insurance companies, held:

> "When the insured risk is located or resident in Maine and there are some business contacts with this state the insurance company is subject to the taxing jurisdiction of Maine."

Surely, for purposes of the insurance premium tax, this company is maintaining "some business contacts with this State".

We are aware of the United States Supreme Court's decision in *Provident Savings Assn. v. Kentucky,* 239 U.S. 103 (1915) where it was held that, on similar facts, that the continued collection of premiums by an insurance company, after withdrawal from the State, did not constitute the "doing of business." It is believed that the United States Supreme Court, if presented the question raised by this opinion today would follow and expand upon the California Court's reasoning in *People v. United National Life Insurance Co.,* supra. The findings of the California Court were appealed to the Supreme Court of the United States. It was dismissed for "want of a substantial Federal Question." *United National Life Insurance Company, et als. v. California,* 389 U.S. 330 (December 11, 1967).

It should be noted that pursuant to Title 24-A M.R.S.A. §405 of the recently enacted Maine Insurance Code, to be effective January 1, 1970 insurance companies, which formerly held Certificates of Authority and which continue to collect new premiums resulting from their former authorized operations in Maine, must obtain a Certificate of Authority pursuant to §404. Such companies will be specifically subject to regulation by the State.

It is not necessary to here decide whether or not this company collects premiums "in the State", as a basis for the imposition of a premium tax, inasmuch as this company is "doing business" in Maine; and it is this latter ground upon which this opinion is rested.

WENDELL R. DAVIDSON
Assistant Attorney General

August 11, 1969
Inland Fisheries and Game

Maynard F. Marsh, Chief Warden

Hunting, etc. by Indians, P.L. 1969, Ch. 338

SYLLABUS:

An Indian may not, under P.L. 1969, Ch. 338, take a deer on reservation lands and sell it.

FACTS:

P.L., 1969, Chapter 338 amended 12 M.R.S.A. §2301, sub- §3, by adding a new paragraph A which provides that nothing in the fish and game laws "shall be construed to encroach upon the right of said Indians to take wild life for their own sustenance on their own reservation lands."

QUESTION:

Does this law mean that an Indian, on reservation lands, may take a deer, sell it, and use the money to purchase food or clothing?

ANSWER:

No.

OPINION:

The answer to this question depends upon the meaning of the word "sustenance" in the context of the statute, having in mind the intent of the Legislature.

"Sustenance" is defined in the New Standard Dictionary as follows:

"1. The act or process of sustaining; especially, maintenance of life or health; subsistence.

2. That which sustains; especially, that which supports life; food; as, a day's sustenance."

In Webster's International Dictionary (2nd Ed.) it is defined as:

"1. Means of support, maintenance or subsistence; a living; now, more often, food; provisions; also, nourishment, as to wring a scanty sustenance from the soil; . . . ."

In *Justice v. State* (Ga. 1902) 42 S.E. 1013, the only decided case defining "sustenance" which has been found, it was held that as used in a statute declaring that whoever shall "deprive of necessary sustenance shall be guilty of misdemeanor" it means "that necessary food and drink which is sufficient to support life and maintain health" and not to include medicine.

Giving consideration to these definitions, and to the fact that the right of Indians to take wild life for their own sustenance applies only on their own reservations, it is our opinion that it was not the intent of the Legislature to allow an Indian to sell such wild life and use the proceeds for buying food or clothing. The intent of the Legislature was to allow an Indian to take deer on his own reservation solely to feed himself and his family.

LEON V. WALKER, JR.
Assistant Attorney General

August 14, 1969
Park and Recreation Commission

Eugene P. Hart, Supervisor

Fee for copy of Lake Chart prepared under 38 M.R.S.A. §323

SYLLABUS:

38 M.R.S.A. §323 does not authorize the Director of the State Park and Recreation Commission to prepare and sell a navigational chart showing the navigational aids placed in a certain lake in accordance therewith, since there is no express statutory authority for charging a fee for such a publication.