

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

tribal governor, with the advice and consent of the tribal council, with preference first given to unsuccessful candidates in the previous election, in descending order of the number of votes cast for such candidates. Vacancies so filled shall be for the unexpired terms. Tribal members who have been convicted of a felony shall not be permitted to hold any tribal office, either elective or appointive.”

Although the law states that a Representative shall hold office until his successor is elected, it does not appear to mean that vacancies shall be filled by general election of the tribe. Rather paragraph 4 governs filling of any vacancies. Thus the procedure would appear to be as follows: (1) The Commissioner calls a tribal meeting, (2) the tribal governor nominates a replacement giving preference to prior candidates as prescribed, (3) the Council accepts or rejects nominations until a successor is selected.

JOHN M. R. PATERSON
Assistant Attorney General

December 10, 1970
Division of Probation and Parole

G. Raymond Nichols, Director

Commutation of Sentence Prior to Commencement

SYLLABUS:

The Governor with the advice and consent of the Council may, pursuant to Maine Constitution, Article V, Part 1, §11, commute a sentence of which an inmate at the Maine State Prison is not yet in execution.

FACTS:

An inmate at the Maine State Prison currently in execution of a sentence, and subject to serve a consecutive sentence upon completion of that currently being served, has applied to the Governor for commutation relative to both sentences.

QUESTION:

Has the Governor with the advice and consent of the Council authority to grant a commutation in connection with a sentence of which an inmate at the Maine State Prison is not yet in execution?

ANSWER:

Yes.

REASON:

The power of the Governor with the advice and consent of the Council to grant commutation is found in Maine Constitution, Article V, Part 1, § 11, which reads as follows:

“He shall have power, with the advice and consent of the Council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves,

commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. Such power to grant reprieves, commutations and pardons shall include offenses of juvenile delinquency.”

We find in this broad grant to the Governor of the pardon and commutation power no restrictive language requiring a convicted offender to be in execution of sentence before such pardon or commutation power might be exercised. Absent such restrictive language we are of the opinion that the Governor with the advice and consent of the Council may grant an inmate at the Maine State Prison a commutation of a sentence imposed, but of which he is not yet in execution.

COURTLAND D. PERRY
Assistant Attorney General

December 15, 1970
Environmental Improvement Comm.

William R. Adams, Director

Minimum Lot Size for Residential Purposes

SYLLABUS:

A lot or parcel of land which is served by a private community sewer may be used for single family residential purposes without conforming to the 20,000 square feet minimum size otherwise required by 12 M.R.S.A. § 4801 (P.L. 1969, c. 365, §1).

FACTS:

A land developer proposes to subdivide a lot or parcel of land into lots upon which single family residences will be erected. The individual lots will be less than 20,000 square feet in size. The developer proposes to lay a pipe from each lot or residence leading to a private community sewer pipe which in turn will lead to a large private community septic tank and leaching field.

QUESTION:

May a land developer subdivide a parcel of land into lots of less than 20,000 square feet per lot when each lot will be served by a pipe leading to a private collector pipe within the meaning and intent of 12 M.R.S.A. § 4801 (P.L. 1969, c. 365, § 1)?

ANSWER:

Yes.

REASONING:

12 M.R.S.A. § 4801 (P.L. 1969, c. 365, § 1) provides:

“In all areas of the State . . . a lot or parcel of land which is *not served by public or private community sewer* . . . shall not be used for single family