

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

September 1, 1971  
Executive

Kermit V. Lipez, Administrative Assistant

### Indian Reservations – Local Liquor Options

#### *SYLLABUS:*

The Indian Island Voting District has properly authorized sale of table wine for consumption off premises, by affirmative vote on that local option question on November 3, 1970, pursuant to 28 M.R.S.A. § 102, which empowered such vote in a “municipality or unincorporated place,” it being an “unincorporated place” within the meaning of that statute. It has not voted on the sale of malt liquor option. 28 M.R.S.A. § 103 provides Indian Reservations a procedure for authorizing all local liquor options.

#### *FACTS:*

It appears that on November 3, 1970 the Indian Island Voting District voted affirmatively, 48 to 11, on local option question 6A – the sale of table wine for consumption off the premises.

#### *QUESTIONS:*

1. Have the voters of Indian Island Voting District, acting pursuant to 28 M.R.S.A. § 102, properly authorized the sale of table wines not to be consumed on the premises?
2. Are there any records indicating that the voters of Indian Island Voting District have authorized the sale of malt liquor not to be consumed on the premises?
3. Regardless of the answer to question 2, does 28 M.R.S.A. § 103 provide the Indian Reservations with a procedure for authorizing the sale of malt liquor not to be consumed on the premises, as well as all other local option questions?

#### *ANSWERS:*

1. Yes.
2. No.
3. Yes.

#### *REASONS:*

##### *Relative to question 1:*

Section 9 of Chapter 360 of the Public Laws of 1969 amended section 102 of Title 28 of the Revised Statutes by adding a new paragraph at the end providing:

“Table wines not to be consumed on the premises may be sold by licensees in a municipality or unincorporated place where a majority of votes cast in the municipality or unincorporated place at the general election in November 1970, are in the affirmative to the following local option question:

Shall licenses be granted in this city or town for the sale herein of table wines not to be consumed on the premises?”

It appears from the stated facts that the Indian Island Voting District did in fact

undertake a vote on the local option relative to sale of table wines not to be consumed on the premises, and that such vote was in the affirmative. The decisive issue on the first question posed is whether or not the above-quoted new paragraph of 28 M.R.S.A. § 102 empowered the "Indian Island Voting District" to take such a vote. That paragraph authorized such a vote by a "municipality or unincorporated place." The word "municipality" as used in the above-quoted paragraph includes "cities, towns, and plantations." 1 M.R.S.A. § 72, subsection 13. While the Indian Island Voting District is not a city, town or plantation, it would seem to be an "unincorporated place" within the meaning of the reference paragraph.

There is nothing within Title 28 which expressly or impliedly excepts the Indian Island Voting District from inclusion within the above-quoted paragraph. In an Opinion of the Attorney General of the State of Maine, found on page 48 of the Annual Report of that official for 1903-1904, it was held that this "Indian Reservation is State land and an unincorporated place . . ." It further appears that this local option question was in fact submitted by the Secretary of State to the Indian Island Voting District for its vote thereon, and that such vote was subsequently recorded by that official. Such contemporaneous administrative interpretation by that official is worthy of consideration in construing the applicability of the reference new paragraph of Section 102 of Title 28.

I can find no sound reason that might tend to militate against the applicability of the reference paragraph to the Indian Island Voting District. Title 28 provides for local consideration of license applications, i.e., by the Penobscot County Commissioners. For example, see 28 M.R.S.A. §§ 103 and 252. The existing machinery for State Administration, supervision and law enforcement are available for operation over such a place:

"The jurisdiction and sovereignty of the State extend to all places within its boundaries . . ." 1 M.R.S.A. § 1.

In the words of the Supreme Judicial Court of Maine in *State v. Newell*, 84 Me. 465, 466 (1892):

"Whatever the status of the Indian tribes in the west may be all the Indians of whatever tribe, remaining in Massachusetts and Maine, have always been regarded by those States and by the United States as bound by the laws of the State in which they live. *Danzell v. Webquish*, 108 Mass. 133; *Murch v. Tomer*, 21 Maine, 535. Their position is like that of those Cherokees who remained in North Carolina. It was said of them by the United States Supreme Court, in '*Cherokee Trust Funds*,' 117 U.S. 288, that they were inhabitants of North Carolina and subject to its laws."

Also see Opinion of this Department to the State Tax Assessor dated February 6, 1953, holding that a statute which imposed a tax on sales at retail "in this State" applied to such sales within Indian reservations.

*Relative to question No. 2:*

The Office of the Secretary of State has informed me that it has no records of any vote whatever on the question of sale of malt liquor not to be consumed on the premises.

*Relative to question No. 3:*

Each of the Indian Reservations is an "unincorporated place" within the meaning of

28 M.R.S.A. § 103, for the reasons elaborated hereinabove. This latter section does provide the procedure whereby the voters of each such place can authorize the sale of malt liquor not to be consumed on the premises, as well as all the other local option questions specified in 28 M.R.S.A. § 101. Such procedure must be initiated by "petition signed by 20% or more of the persons resident in an unincorporated place . . . . requesting a vote on local options questions . . . ."

CHARLES R. LAROUCHE  
Assistant Attorney General

September 13, 1971  
Real Estate Commission

Leo M. Carignan, Executive Secretary

6 month and 3 month residency requirement

*SYLLABUS:*

The requirement that an applicant, for a real estate broker's or salesman's license, must be a resident who has maintained a residence in this State for six months and in a municipality for three months is an unconstitutional requirement.

*FACTS:*

An applicant for a real estate broker's or salesman's license is required to be a resident of this State qualified to vote in municipal and State elections. To be qualified to so vote one must, inter alia, have established a residence in this State for six months and in a municipality for three months.

*QUESTION:*

Whether the six month and three month time limitations imposed upon residents of this State is a constitutionally condoned limitation.

*ANSWER:*

No.

*REASON:*

The qualifications for a resident broker's or salesman's license are provided for in 32 M.R.S.A. § 4103 (1) (B), which provides in pertinent part:

"1. Qualifications. An applicant for a real estate broker's or salesman's license shall submit to the commission written evidence, verified by oath that the applicant:

\* \* \* \* \*

"B. Is a resident of the State, qualified to vote in municipal and state elections prior to his application;"

The above statute establishes a discrimination on the basis of residents who are qualified to vote as opposed to those who are residents but have not met the