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March 8, 1972

John Stevens, Commissioner

Indian Affairs.

James S. Erwin, Attorney General

Attorney General

Incompatibility of Offices of Commissioner of Indian Affairs  
and Indian Tribal Governor

SYLLABUS:

The offices of Commissioner of Indian Affairs and Governor of the Passamaquoddy Indian Tribe cannot be held by one man. The two offices are incompatible because duties of the Commissioner include general supervision and review of actions of tribal governors.

FACTS:

John Stevens was elected in 1970 to the office of Passamaquoddy Tribal Governor. In 1971, and before his term of office as governor has expired, he has been appointed Commissioner of Indian Affairs.

QUESTION:

Are the offices of Commissioner of Indian Affairs and Indian Tribal Governor compatible, one with the other, such that both offices can be held by one person?

ANSWER:

No.

REASON:

The Commissioner of Indian Affairs is appointed by the Governor with the advice and consent of the Council. The duties of the Commissioner are to exercise general supervision over the Indian tribes in all matters except education and certain instances of relief; to carry into effect all treaties; to appoint tribal physicians or nurses; to examine and pass upon all contracts relating to the sale or disposal of trees, timber or grass on the Indian lands; to pay bounties for the production of certain agricultural products; to make assignments of unassigned lands; and to supervise the conduct of biennial elections.

The two tribal governors are elected biennially on the even-numbered years in September. The Passamaquoddy Tribe has its election on Tuesday following Labor Day. The duties of the Passamaquoddy Governor are to appoint a clerk of the reservation, an

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overseer of the poor, a road commissioner, a local health officer and a tribal hall keeper, all subject to the approval of the tribal council; to draw warrants on the Treasury of the State for agricultural product bounties; to appoint constables; to prepare the ordinances, rules, and regulations for the tribe subject to approval by the tribe at a general meeting called by the governor; to prescribe penalties to \$100 for violations of ordinances; to cause a listing for licensing purposes of all dogs on the reservation; and to appoint Indian Housing Authority Commissioners.

The election of the Tribal Governor is presided over by the Commissioner of the Department of Indian Affairs and he also gives notice of the time and place of the election by posting notices 7 days before the election.

The tribal governor presides over all meetings of the council and is a member ex officio. The council is empowered to certify annually all persons who are members of the tribe; those certified members of the tribe who are 18 years of age or older are eligible to vote at biennial elections presided over by the Commissioner.

Two offices held by one person are incompatible when the holder cannot in every instance discharge the duties of each. Implicit in the supervisory duties of the Commissioner is review of actions taken by the Tribal Governor. There can be no meaningful review when the two offices are held by one person. The two offices are incompatible because all supervisory duties of the Commissioner cannot be fully discharged. In addition there would seem to be a conflict of interest if a person, presently Commissioner, should run for Tribal Governor at an election which he (as Commissioner) supervises and presides over.

The case of Howard v. Harrington, 114 Me. 443 states that acceptance of the second office automatically vacates the first office, where the two offices are incompatible. The office of Passamaquoddy Tribal Governor should be considered vacant, and a meeting of the Tribe must be called by the Commissioner, pursuant to 22 M.R.S.A. § 4831, to fill the vacancy.