

MAINE STATE LEGISLATURE

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September 20, 1972

S. Glenn Starbird, Jr., Deputy
Commissioner

Indian Affairs

John Kendrick, Assistant

Attorney General

Suspension of Constable

You have asked whether the Commissioner of Indian Affairs has authority to suspend a constable on one of the Indian reservations. It appears he has no such authority because:

1). suspension can only be viewed as a temporary removal from office; and

2). removal of a constable is authorized only to the Tribal Governor upon recommendation of the department. 22 M.R.S.A. § 4716, sub-§ 2. Thus, if a situation arises where a Tribal Governor refuses the Commissioner's recommendation to suspend a constable the Commissioner has no further authority (beyond recommendation) to suspend the constable against the wishes of the Tribal Governor.

You have also asked the related question of what the Commissioner can do to remedy a situation where, in the Commissioner's judgment, a constable is not performing his duties under a contract entered into between the Department of Indian Affairs and the constable.

Compensation for the services performed by the constables is paid by the Department of Indian Affairs in amounts determined by the Department under authority of 22 M.R.S.A. § 4716. Written contracts of employment are executed by the Department and the individual constables. By their terms, the contracts require the contractors to:

1). perform their duties efficiently as directed by the Tribal Governor and Council; and

2). take proper care of all equipment, uniforms and supplies issued to them; and

3). accept training opportunities as they are offered by the Department.

Also, the contracts provide for their cancellation upon seven days notice being given by one party to the other party.

NOT A FORMAL OPINION

The contracts involved do not alter the basic employment relationship authorized by 22 M.R.S.A. § 4716, to wit: the constables are appointed by, work under the direction of, and are subject to dismissal or suspension by the Governor and Council of the tribe.

What the contracts do provide is a control over State funds used to pay the Indian constables. They may be cancelled upon short notice. The Department of Indian Affairs is charged with administration of these funds, and is properly concerned with getting value received for money spent.

Although he cannot suspend or dismiss a constable from his appointment, the Commissioner can give notice and cancel the contract because of a breach of contract by a constable. In other words, if a constable is not performing his duties as directed by the Governor and Council, or is not taking care of his equipment and supplies, or does not attend a training session arranged by the Department, the Commissioner in any of these events may, upon giving 7 days notice, cancel the employment contract of the constable, in which event he loses his pay under the contract but not his appointed job.

JOHN KENDRICK
Assistant Attorney General

JK/ec

NOT A FORMAL OPINION