

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
**ATTORNEY GENERAL**

For the Years  
1967 through 1972

John Stevens, Commissioner

Appropriating Funds to Support an Office for Governors' Interstate Council

*SYLLABUS:*

Public funds may not be appropriated for general use by the Governors' Interstate Indian Council, Inc., a private Minnesota corporation, not organized by Act of a State Legislature, because there is no assurance that such appropriation would be for a public purpose.

*FACTS:*

The Governors' Interstate Indian Council (a voluntary organization consisting of representatives from several states having Indian population in which Maine has participated for the past 25 years) proposes to organize a corporation to implement its policies. We are informed that Articles of Incorporation for such corporation have been filed in the State of Minnesota and that a Certificate of Incorporation has been issued by the Minnesota Secretary of State. A copy of the Articles of Incorporation are annexed hereto.

We are further informed that a proposal has been made that each state participating in the Governors' Interstate Indian Council appropriate funds for general use by the corporation (specifically the funds are to be used to pay the corporation's office overhead and salary expenses). Under the proposal, the relative size of each state's appropriation would be computed by pro-rating the total amount required by the corporation to fund its operations among each participating state in the ratio which a state's total Indian population bears to the combined total Indian population of all participating states.

We are advised that the total proposed budget for fiscal 1973 is \$60,000 and \$91,000 for fiscal 1974.

The Commissioner of the Department of Indian Affairs has requested our opinion whether the State may lawfully appropriate its public funds for general use by the Governors' Interstate Indian Council, Inc.

*QUESTION:*

May the State lawfully appropriate public funds for general use by the Governors' Interstate Indian Council, Inc.?

*ANSWER:*

No.

*REASONS:*

The law is well settled that public funds may not be appropriated for private purposes;

public funds may properly be appropriated only for the benefit of the public. *State Constitution*, Article IV, Part Third, 1. *State v. Stinson Canning Company*, 320 Me. 161, 211 A.2d 553 (1965); *State v. Vahlsing*, 147 Me. 417, 88 A.2d 144 (1952). This does not mean that the appropriation must benefit all segments of the public equally, or that the legislature is absolutely precluded from appropriating money for private individuals or for particular classes of individuals. As stated by Mr. Justice Marden in *State v. Stinson Canning Company*, *supra* (at page 324):

“Whenever it is apparent from the scope of the Act that its object is for the benefit of the public, and that the means by which the benefit is to be attained are of a public character, the Act will be upheld even though incidental advantage may accrue to individuals beyond those enjoyed by the general public.”

Examples of the kinds of expenditures which have been deemed to be for a public purpose follow, namely: Expenses of government, promotion of patriotism, erection of memorials and veterans’ halls, veterans’ benefits, housing, moral obligations and claims, promotion of private enterprise, unemployment relief, disaster relief, urban development, public fairs and exhibitions. See generally, 63 *Am. Jur. 2d* “Public Funds”, §§58-82, pp. 446-469.

In the instant case, there is nothing in the Articles of Incorporation which expressly declares that the Governors’ Interstate Indian Council, Inc. is for a public purpose. There is no indication that the corporation (a private corporation) has been organized to engage in the kinds of activities referred to above or any other activities in the nature of a public purpose. Indeed the Articles of Incorporation are so broad, that the corporation could engage in virtually any kind of corporate activity short of clearly illegal activities.

Article I provides in general language that “the purposes of this corporation shall be to promote the interests of the Indian People of the United States.” Article IV (1) empowers the corporation “to do any and all acts and things necessary and proper to carry out the objectives and purposes of the corporation. Article X declares that the objects and purposes of the corporation are “solely to advance the positions of the Indians in the American society, and to strive to remove the obstacles to their advancement that are now existent in the society.” These purposes, while undisputedly eleemosynary and laudible in nature, do not necessarily have as their end the benefit of the public as required for purposes of public expenditures. Such corporate purposes could, as well, be directed toward essentially private activities designed to further private purposes.

While we recognize that this State has on several occasions enacted legislation and appropriated public funds pertaining specifically to Indians residing in the State (e.g. 22 M.R.S.A. §§4701-4840; 20 M.R.S.A. § § 2205-2210), in each of these situations the state has carefully delineated the purpose for which the funds were to be expended, and the state has retained some element of control over the manner in which the funds were to be expended.

In the instant case, the proposed appropriation would go to an out-of-state private corporation which has evidently been organized pursuant to Minnesota’s corporation laws, and has not been formed pursuant to the Act of a State Legislature. The State of Maine would have no control over the manner in which the funds are to be expended and would have no voice in the setting of corporate policy. While John Bailey, a Maine resident, is designated a member of the corporation’s Board of Directors in Article II of the Articles of Incorporation, Mr. Bailey has no office in State government and is a free agent.

For the foregoing reasons, it is our opinion that it would not be proper for the State to appropriate its funds for general use by the private Minnesota corporation.

MARTIN L. WILK  
Assistant Attorney General

October 4, 1972  
Human Rights Commission

Robert Talbot, Executive Sec.

Interpretation, Maine Human Rights Act (Ch. 501 PL 1971)

*SYLLABUS:*

The Maine Human Rights Commission does not possess the power to issue subpoenas on its own pursuant to 5 M.R.S.A. § § 4566, sub-§ § (4) and (12) because those sections do not specifically confer such power upon the Commission.

*FACTS:*

5 M.R.S.A. § 4566 sets forth the powers and duties of the Maine Human Rights Commission. The section provides:

“The Commission has the duty of investigating all conditions and practices within the State which allegedly detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity. Without limiting the generality of the foregoing, it has the duty of investigating all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons, excepting law enforcement agencies and courts of this State and the United States. Based on its investigations, it has the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State.

“To carry out these duties, the Commission shall have the power:

\* \* \* \* \*

“4. Hearings. To hold hearings, administer oaths and to take the testimony of any person under oath. There shall be no executive privilege in such investigations and hearings, but law enforcement officers, prosecution officers and judges of this State and of the United States shall be privileged from compulsory testimony or production of documents before the commission. Such hearings and testimony may relate to general investigations concerning the effectiveness of this Act and the existence of practices of discrimination not prohibited by it, as well as to the investigations of other alleged infringements upon human rights and personal dignity. The Commission may make rules as to the administration of oaths, and the holding of preliminary and general investigations by panels of commissioners and by the executive secretary.

\* \* \* \* \*

“12. Other acts. To do such other things as are set out in the other subchapters, and everything reasonably necessary to perform its duties under this Act.”

The Human Rights Commission has inquired whether the foregoing provisions empower it to issue subpoenas ducas tecum and subpoenas ad testificandum on its own.