

# MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT  
OF THE  
ATTORNEY GENERAL

For the Years  
1967 through 1972

October 2, 1972  
Indian Affairs

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.

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GOVERNORS' INTERSTATE INDIAN COUNCIL, INC.

ARTICLE I

I. Purposes of Corporation

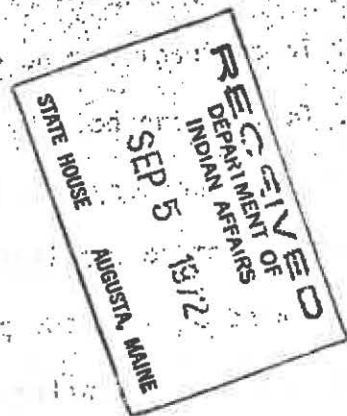
The purposes of this corporation shall be to promote the interests of the Indian People in the United States, especially those residents in the states participating in the Governors' Interstate Indian Council; and the principal, though not the exclusive function will be to act as Ombudsmen for Indian individuals and for Indian interests, which are presently so entangled with State and federal administrative agencies; and further, to act as a harmonizing agency between the conflicts of policy of the diverse administrative agencies, affecting Indians.

ARTICLE II

II. Corporation Created

The following states participating in the activities of the Governors' Interstate Indian Council, each having been duly committed by the Governor of the respective State, by the appointment of his personal representatives to the Council, to wit:

Alaska	Eben Hopson
Arizona	Pete C. Homer, Jr.
Colorado	Henry W. Hough
	Edward Box, Sr.
California	Bernice Pate
Idaho	Michael Mitchell
	Max Snow
Illinois	Mary Maynelle Pipher
	John Quillen
Iowa	Virginia L. Speer
	Pearl Bobinet
Maine	John L. Bailey
Michigan	Mark Perrault
Montana	Harold J. Boyd
Nevada	Robert R. Johnson
New Mexico	Wendell Chino
	Mel McCutchan
New York	Elma R. Patterson
	Sarah E. DeLand
North Carolina	Robert Leatherwood III
North Dakota	Austin Engel
	Earl J. Azure



Oklahoma

Oregon

South Dakota

Pennsylvania

South Carolina

Texas

Utah

Washington

Wisconsin

John Shaw

Lawrence Hart

Charles E. Clay

Vernon L. Ashley

Theodore B. Hetzel

Harry Bryan

Walter W. Broemer

Roland Poncho

Bruce G. Parry

William Jeffries

Marilyn Clark Skenandore

Atlee A. Dodge

and such persons as shall be duly appointed to succeed them are created and declared to be a body corporate by the name of The Governors' Interstate Indian Council, Inc., and by such name shall be known and have perpetual succession of the powers, limitations, and restrictions herein contained.

#### ARTICLE III

##### III. Powers of Corporation.

The corporation shall have the following powers:

- a. To sue and be sued, and complain and defend in any court of competent jurisdiction;
- b. To adopt, alter, and use a corporate seal;
- c. To choose such officers, managers, and agents as the business of the corporation may require;
- d. To ordain and establish by-laws and regulations, not inconsistent with the laws of the U. S. or of any State in which the corporation operates, for the management of its property and the regulation of its affairs;
- e. To contract and be contracted with;
- f. To take and hold by lease, gift, purchase, grant, devise, or bequest any property, real or personal, necessary for carrying into effect the purposes of the corporation, subject to applicable provisions of laws of any state (1) governing the amount or kind of real and personal property which may be held by, or (2) or otherwise limiting or controlling the ownership of real and personal property by a corp-



oration operating in such state;

g. To transfer or convey real or personal property;

h. To borrow money for the purposes of the corporation, issue notes, bonds, or other evidences of indebtedness therefor, and secure the same by mortgage, subject in every case to all applicable provisions of Federal or State Law;

i. To use and display such emblems and badges as it may adopt.

j. To use the corporate funds to give prizes, scholarships, and other financial encouragement or assistance to Indians who have demonstrated outstanding merit such as to bring credit to the Indians of the United States, or who have demonstrated both need and potential to reach a meritorious goal.

k. To publish a magazine, newspaper, books, pamphlets, or any sort of publication whether issued once or at regular intervals;

l. To do any and all acts and things necessary and proper to carry out the objectives and purposes of the corporation.

#### ARTICLE IV

##### IV. Headquarters; Territorial Scope of Activities; agent to accept service of process.

(a) The headquarters and principal offices of the corporation shall be located in any state participating in the Governors' Interstate Indian Council, and they may be relocated from one such participating state to another. In choosing a location for the headquarters and principal offices, the following shall be important considerations: That the location chosen should be near a large Indian population, and that it be at such a location where participating states have air access.

(b) The corporation shall maintain at all times at the location of its headquarters, a designated agent authorized to accept service of process for the corporation, such designation to be filed in the office of the United States District Court in the district of location, and in the office of the Secretary of State of the State of location. Notice to or service upon such agent, or mailed to the business address

of such agent, shall be deemed sufficient notice or service upon the corporation.

## ARTICLE VI

### VI. Membership and Board of Directors.

The membership of the corporation shall coincide with the number of participating states, but not to exceed three from each state. The membership of the Board of Directors shall be made up of duly appointed representatives of each designated state, duly elected by the membership at their annual meeting to wit:

Austin Engel	North Dakota
Wendell Chino	New Mexico
Henry Hough	Colorado
Eben Hopson	Alaska
John L. Bailey	Maine
William A. LeBlanc	Michigan
Mrs. Elma R. Patterson	New York
Vernon L. Ashley	South Dakota
Roland Poncho	Texas

The Board of Directors shall be the governing body of the corporation, and shall elect the officers of the corporation, each participating state being granted three votes to be cast as the three, or fewer, representatives from each state, individually or collectively, decide.

## ARTICLE VI

### VI. Officers.

The officers of the corporation shall be an executive director, an assistant director, an administrative secretary, and a clerk stenographer, and such officers or additional personnel as may be designated by the board of directors.

## ARTICLE VII

### VII. Distribution of Income and Assets.

No part of the income or assets of the corporation shall inure or be distributable to any member or officer thereof. Nothing in this subsection, however, shall be construed to prevent the board of directors from adopting terms of employment for the executive director or the assistant director.

The corporation shall not make loans to its officers or directors, or employees.

Any director who votes for or assents to the making of a loan to an officer, director,

or employee of the corporation, and any officer who participates in the making of such loan shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

#### ARTICLE VIII

##### VIII. Non Political Nature of Corporation.

The corporation, its directors and officers as such, shall not contribute to or otherwise support or assist any political party or candidate for public office.

#### ARTICLE IX

##### IX. Liability for Acts of Officers and Agents.

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

#### ARTICLE X

##### X. Prohibition Against Issuance of Stock or Payment of Dividends.

The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends, its objects and purposes being solely to advance the position of the Indians in the American society, and to strive to remove the obstacles to their advancement that are now existant in the society.

#### ARTICLE XI

##### XI. Books and Records; Inspection.

The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the annual, and interum, meetings of the board of directors, and committees having any authority under the board of directors; and it shall also keep at its principal office a copy of these records for a period of at least ten years. All books and records of the corporation may be inspected by any director duly appointed, or at the request of 50 percent of the board of directors an audit shall be carried out according to the procedures established in its respective state, or by his attorney, at any reasonable time.