

# MAINE STATE LEGISLATURE

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September 11, 1973

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Educational & Cultural Services

Clarification of Provisions of P.L. 1973, C. 571, Sec. 53-C, Respecting  
Education of Indian Children

The approach of the date on which 1973 session laws become effective makes it necessary that legal interpretations be obtained on several points which arise because of the enactment of the above cited provisions as well as from the repeal of the legislation (T. 20, Sec. 1452) which specifically provided for the education of all children living with a parent or guardian on Indian Reservations.

Will you please favor us with your opinions on the questions posed so that an orderly transition of the Indian education program may be effected.

QUESTIONS

1. Is the Maine Indian Education program as authorized by P.L. 1973, C. 571, Sec. 53-C, a State agency?
2. P.L. 1973, C. 571, Sec. 53-C, is enacted as part of Title 22, MRSA. Is the program a part of, or subject to, the Department of Indian Affairs. If not, is it an Independent agency of the State?
3. Are the superintendent, the treasurer, and other employees of the program State employees? If so, are they in the classified or unclassified service?

(NOTE: R.S. T 5, Sec. 711 defines the unclassified service. Unorganized territory employees are unclassified, since the Indian education program, heretofore derived its authority from R.S. T 20, Sec. 1452, within the unorganized territory law they have had unclassified status. The definition of unclassified service has not been broadened to cover employees of a separate Indian Education program. Does this lack mean that such employees must be classified?)

4. The Indian Education program reportedly has hired a business manager-treasurer. Is this appointment valid or should it be re-authorized on or after October 4, 1973?

*See P.L. 1973  
See C 625  
See 24*

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5. May the business manager and the treasurer be the same person? If not, may the superintendent and the treasurer be the same person.

(As a matter of sound administration the person responsible for maintaining the records should not be the one responsible for the deposit, and the custody of funds nor for the disbursement of funds. The question is asked not as a mark of administrative practice but of law.)

6. Is the treasurer required to be bonded outside of the State's blanket fidelity bond (as is the State treasurer) and, if so, to whom should he give bond and for how much?
7. Are the superintendent and other employees of the program covered by the State blanket fidelity bond?
8. If the Indian Education employees are not State employees, what rights do they have to retirement and survivor benefit eligibility, group insurance, coverage, employee share of Blue Cross/Blue Shield premiums and other employee fringe benefits?
9. If the superintendent, business manager/treasurer, instructional staff and other employees of the program are not State employees, must the Indian School Committees as a joint employer, register as an employer with the Internal Revenue Service respecting income tax deductions, with the Department of Manpower Affairs respecting coverage for unemployment compensation benefits and contract with the Retirement System concerning Social Security coverage for non-teaching personnel?
10. If the employees are not State employees, must the Maine Indian Education program contract with the Maine State Retirement System for retirement coverage of its non-teaching personnel under the participating district framework?
11. The appropriation for operating the Indian schools was included in the current and supplemental appropriations acts under the Department of Educational and Cultural Services. As a component of the department operating from general fund appropriations, it was subject to both line category restrictions and a maximum employee count.

September 11, 1973

The Appropriations for 1973-1974 were

	Current Services <u>P&amp;S 1973, C. 100</u>	Supplemental <u>P&amp;S 1973, C. 108</u>	Combined Totals
Personal Services (22 1/2)	\$134,850	(6) \$53,000	(28 1/2) \$242,850
All Other	221,680	5,800	227,480
Capital Expenditures	1,210	4,000	5,210
	<u>\$407,740</u>	<u>\$67,800</u>	<u>\$475,540</u>

Are the Indian school committees, jointly, required to observe and comply with the line limitations and maximum employee complements as authorized in these Acts, or may they expend the total appropriations, or that part of them which is unexpended and unobligated as of October 4, 1973, for any purpose which is legal for school committees of local units - including the employment of persons numbering in excess of 25 1/2?

12. If line and employee limits are required, what agency is responsible for compliance? Specifically, is the Department of Educational and Cultural Services relieved of the responsibility for compliance?

(NOTE: Unlike the authorization to transfer appropriations from one agency to another generally incorporated in the State government reorganization acts of the 105th Legislature's special session, no such authority is granted by P.L. 1973, C. 571, Sec. 55-C. If the Maine Indian Education program is ruled to be a State agency independent of the Department of Educational and Cultural Services, the furnishing of funds appropriated to this department would seem to fall into the category of fund transfers from one department to another which has been ruled by your office as not permissible even by the Governor and Council.

13. In the submission of future budget requests, are they submitted to the Commissioner of Educational and Cultural Services merely as a pro-forma procedural step prior to their submission to the Legislature (sic) by the joint school committee or are they to be included as an integral part of the budget requests of the Department of Educational and Cultural Services.

(Departments do not submit budgets to the Legislature but to the Budget Officer in such form as he may prescribe after which they will be incorporated, with such changes as the Governor considers necessary, in the recommendations of the Governor to the Legislature.)

14. A school construction program is underway involving the expenditure of a balance from one general fund bond issue, a bond issue authorized by P&S Laws of 1971, C. 118, and a transfer from the Construction Reserve of the Contingent Account.

Bids were requested, opened and acceptance of the low bid deferred pending provision of additional financing from the Construction Reserve.

Acceptance of the bid will be recommended by Council Order and a contract will be signed by the Commissioner prior to October 4, 1973.

Provisions of the subject bond authorization act require proceeds to be held by the Treasurer of State and expended by him on warrants drawn by the Governor and Council.

Which agency will be responsible for the faithful performance of the contract? To which agency will the contractor look for approval of payment requisitions, performance of owner's responsibilities under the contract, execution of change orders, etc.?

15. What transfer of ownership, if any, will be involved in the case of school buses, equipment and supplies within the reservation schools or located on school grounds? What transfer of ownership, if any, is required for the school building structures?
16. Will the automobile public liability and property damage with extended coverage insurance, and fire insurance on buildings and contents, be carried on the State schedules? If so, under what agency?
17. Should checks, purchase orders, remittance advices and other documents identify the Indian Education program as State agency, or will it not be?

18. Will the Maine Education Program be responsible for maintaining and reporting continuing inventory records through and to the Bureau of Public Improvements?
19. Will the employees of the Maine Indian Education program be entitled to the salary increase granted State employees to be effective in the first pay period in July, 1974.