

# MAINE STATE LEGISLATURE

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October 5, 1973

Asa A. Gordon, Deputy Commissioner

Educational and Cultural Serv.

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Attorney General

Clarifications of Provisions of P.L. 1973, c. 571, § 53-C,  
Respecting Education of Indian Children

You ask 19 questions; I will answer each of them individually.

1. The Maine Indian Education Program as authorized by P.L. 1973, c. 571, § 53-C, is a State agency, see 73 C.J.S. Public Administrative Bodies and Procedure, §§ 6 and 9, within the Department of Educational and Cultural Services.

2. The program is a part of and accountable to the Department of Educational and Cultural Services and is not an independent State agency, see P.L. 1973, c. 571, § 53-C, even though enacted as part of Title 22 M.R.S.A.

3. These employees are unclassified under 5 M.R.S.A. § 711 because these employees are still within the scope and definition of the unorganized territory law, 20 M.R.S.A. § 1451, et seq. Even though § 1452, specifically dealing with Indian education within the unorganized territory law, has been repealed, the requirement of P.L. 1973, c. 571, § 53-C, that the Commissioner of Educational and Cultural Services provide for the education of Indian children in the same manner as is done for unorganized territories should any reservation fail to elect a school committee, leaves the strong inference that the Legislature intended employees of the Indian educational program to remain unclassified.

4. The business manager-treasurer appointment should be reauthorized because the statute (P.L. 1973, c. 571, § 53-C) grants the various authorized school committees the power to hire a treasurer, but the effective date of that grant is October 4, 1973.

5. The business manager and treasurer may be the same individual under the statute; however, the superintendent and treasurer must be two distinct individuals -- the one person cannot perform both functions.

6. As a State employee, he need only be bonded by the State's blanket bond under the provisions of 5 M.R.S.A. § 9.

7. Yes, they are State employees.

8, 9, 10. All of these questions need not be considered because the individuals involved are State employees. The basis for this conclusion is that the program is an agency under the Department of Educational and Cultural Services and its operating funds are provided directly by the State.

**NOT A FORMAL OPINION**

11. The school committees have the authority to expend the total amount prorated to them in their initial budget. The Department of Educational and Cultural Services does not appear to have a voice in these expenditures except as to approving the compensation of the superintendent. However, subsequent budgets need the approval of the Commissioner of Educational and Cultural Services and the execution of such budgets "must be carried out within the funds made available and in accordance with the laws governing fiscal responsibility." See P.L. 1973, c. 571, § 53-C.

12. It would seem that the 1973-74 appropriation has been blanketly approved, while in subsequent budgetary years the Department of Educational and Cultural Services will be responsible as the approval authority to make certain that the program is in compliance with employee limits, etc. In the current budgetary school year, § 53-C places the burden of compliance upon the school committees.

13. Future budget requests are submitted to the Commissioner of Educational and Cultural Services for his approval to be submitted as an integral part of the budgetary requests of the Department of Educational and Cultural Services.

14. The Department of Educational and Cultural Services will continue its responsibility. The Indian school committees have no authority under § 53-C to authorize or contract for building construction.

15. and 16. No transfer is necessary, ownership will remain in the State. The school committees are State agencies within the Department of Educational and Cultural Services and 20 M.R.S.A. § 1451, et seq. places the burden of providing schools, buses, supplies, etc. upon the Department of Educational and Cultural Services. P.L. 1973, c. 571, § 53-C merely allows the Indian school committees to do some of these things for themselves under the supervision of the Commissioner. If the school committees fail to perform, he [the Commissioner] must step in and provide for the education of students on that reservation. Insurance, etc. will be carried on State schedules under the authority and supervision of the Commissioner of Educational and Cultural Services.

17. Yes, as a State agency within the Department of Educational and Cultural Services.

18. The Maine Indian Educational Program will be responsible for maintaining and reporting continuing inventory records through the Department of Educational and Cultural Services to the Bureau of Public Improvements.

NOT A FORMAL OPINION

19. Yes, except for the superintendent. His compensation will be fixed contractually by the committee with the approval of the Commissioner. Any salary increase granted to State employees would have no bearing on this written contractual compensation unless a clause making him eligible for such increases exist in the contract. Other employees are hired upon State employee guidelines for unclassified service. They would be eligible for State pay increases under P.L. 1973, c. 571, § 53-C.

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**NOT A FORMAL OPINION**