

# MAINE STATE LEGISLATURE

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November 13, 1973

E. T. Stauffer, Federal-State  
Coordinator

Executive

John Kendrick, Assistant

Attorney General

Ownership and responsibility for maintenance of flood control  
dike on Indian Island

You have asked (1) whether the perimeter dike on Indian Island is owned by the State or by the Penobscot Tribe, (2) who is responsible for its maintenance, and (3) whether the Penobscot Tribe is a "local government" for purposes of receiving funds under the Disaster Relief Act of 1970.

(1) The dike was constructed in 1971 by the Army Corps of Engineers. It is under the ownership control of the Penobscot Tribe. The underlying land, as with all land on Indian Island, by whomever owned, is held by a qualified fee with the determinable quality of the estate in the State of Maine. John v. Sabattis 69 Me. 473, at 478. The State has exercised no ownership rights over the perimeter dike.

(2) We have been provided a copy of the document of agreement between the Corps of Engineers and the Penobscot Tribe. The pertinent point of that agreement is that the Penobscot Tribe agreed, upon completion of construction by the Corps of Engineers, to maintain all the rehabilitation work.

(3) The Penobscot Tribe functions as a local government. It elects a Tribal Governor and Tribal Council to govern the tribe. This procedure is provided by state statute, and is very similar to the procedure of electing Maine municipal officers, i.e., town Selectmen or City Mayor and Councilmen. Other governmental functions, performed by the Penobscot Tribe are those of the tribal physician or nurse, the overseer of the poor, the road commissioner, the local health officer, the tribal clerk and constables. These positions are provided by statute in the same way they are provided for organized municipalities throughout Maine. Additionally the Penobscot Tribe is authorized to enact ordinances (as towns are) to govern conduct on the reservation. Therefore we conclude that the <sup>Penobscot</sup> Tribe is a "local government" for the purposes of receiving funds under the Disaster Relief Act of 1970.

JK/mf

NOT A FORMAL OPINION