

# MAINE STATE LEGISLATURE

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S. Glenn Starbird, Jr., Dep. Comm.  
George C. West, Deputy

Indian Affairs  
Attorney General

**SYLLABUS:**

Reservation land owned by a member of the Penobscot tribe who dies without heirs reverts to the tribe for reassignment. The heir of the owner of land on the Penobscot Reservation must be a member of the tribe to inherit.

**FACTS:**

By memorandum dated March 27, 1974, the Department of Indian Affairs informed us as follows:

Lot 28 Bradley's plan - on Indian Island consisting of about 7-1/2 acres was assigned in 1884 to Swassian Fransway Susup. No record of any conveyances by him to anyone else has been found by Department of Indian Affairs. No record of any conveyances by anyone purporting to be his heir or heirs has been found by Department of Indian Affairs. The 1880 census shows Mr. Susup aged 37, his wife Catherine aged 32 and daughter Zodie aged 13, and although no death records have as yet been located by Department of Indian Affairs, the Department of Indian Affairs asserts that it must be presumed they are all dead. No marriage record for Zodie has been found nor remarriage for her mother. The only way the Department of Indian Affairs even knows they existed is the record of the assignment in 1884 and the census of 1880.

Although there have been Susups in the tribe both before and since 1884, the Department of Indian Affairs informs us, they cannot link them with Swassian Susup either through written records or from the memories of old people. The Department of Indian Affairs therefore concludes that he has no heirs.

**QUESTIONS AND ANSWERS:**

I. If a Penobscot Indian dies without heirs, does land he is in possession of, at death, revert to the tribe, and can it therefore be reassigned? Answer: Yes.

II. If the answer to question I is yes, how do we go about declaring this land to be unassigned once more? Answer: See Reasons #II.

III. If a Penobscot dies without heirs in the ascending or descending lines and no near collateral relatives, that is first cousin or nearer, how remote do we have to go in relationship before declaring no relationship exists - and thus no heir exists? Answer: See Reasons #III.

IV. If a Penobscot dies and has no heirs among the Penobscot Tribe but does have such heirs in another tribe, even as close as grandchild, can such an heir inherit Penobscot land? Answer: No.

REASONS:

I. A reading of the statutes relating to the Penobscot tribe leaves the distinct impression that members of that tribe are entitled to own, individually, a fair share of the tribal lands. While there is no express statutory provision which deals with the question, if we construe the statutes with the above "fair share" doctrine in mind we must conclude that the answer is affirmative.

Note 22 M.R.S.A. § 4780 which provides that the commissioner on application of any member of the tribe may, under certain conditions, cause a lot to be assigned to the applicant from the unassigned lands of the tribe, if any.

Also note § 4782 to the effect that the abandonment of assigned lands may be assigned anew. Assigned lands may pass by inheritance - § 4783. C.F. John v. Sabattis (1879) 69 Me. 473. A complete lack of heirs may be treated as in the case of an abandonment. If we do not so treat such a situation there would be unowned, unused lands that could well be utilized by a member of the tribe. That result would be in contravention of the "fair share" doctrine. The legislature cannot be said to have intended such a result.

II. Section 4781 sets out the substance of the form of assignment to be used by the Commissioner. It would be proper in the assignment, following the description of the land, to insert the following or similar language:

"The above-described land was formerly assigned to \_\_\_\_\_ . He (she) is now deceased. There are no heirs to be found who are members of the tribe. The land has reverted to the status of unassigned land."

III. It is necessary that in searching for heirs that the commissioner be satisfied that no heir, who is a member of the tribe, exists. There is no limit horizontally or laterally as to remoteness of an heir. As long as there is blood relationship to the owner, there is an heir.

IV. The statutes show the legislative intent to have the Penobscot tribal lands owned only by members of the tribe. §§ 4777, 4780, 4782, 4785 and 4786. In fact, § 4782 provides,

"Any member of said tribe who abandons it and joins any other tribe forfeits all lands assigned to him, and the same may be assigned anew as provided in section 4780."

Hence, we must conclude that an heir not a member of the Penobscot tribe may not inherit tribal lands.

George C. West  
Deputy Attorney General

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