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STATE OF MAINE

Inter-Departmental Memorandum Date December 17, 1974

To W. G. Blodgett, Executive Director

Dept. Retirement

From Charles R. Larouche, Assistant

Dept. Attorney General

Subject Eligibility of Indian Police Constables for Participation in Maine State Retirement System

This replies to your memo of May 23, 1974, concerning this subject.

I understand your question to be whether or not the Indian Police Constables are entitled to participate in the Maine State Retirement System either as state employees, under the provisions of 5 M.R.S.A. § 1091 (State employees) or under the provisions of 5 M.R.S.A. § 1092 (participating local district employees)? The answer to that question is negative as to participation under § 1091, and negative as to participation under § 1092.

On October 15, 1974, David C. Crosby, Esquire, of Pine Tree Legal Assistance, Inc., submitted an excellent brief, in letter form, with enclosures (a) through (f), on this question, at my invitation. A copy of that brief, with its enclosures, is attached hereto for your information.

5 M.R.S.A. § 1092, subsection 1, provides:

"The employees of any county, city, town, water district, public library corporation or any other quasi-municipal corporation of the State. . . ."

may participate in the Maine State Retirement System as a participating local district. This Office has interpreted the phrase "other quasi-municipal corporation" to mean a corporation which performs a municipal function. The word "quasi" modifies the function - "municipal," and not the entity - "corporation." This seems evident from the structuring of this phrase and from consideration of the specific examples, all of which are corporations, that precede this general phrase and which limit the meaning of the general term to others of a similar nature.

I have examined Mr. Akins letter and its enclosure and I find nothing to support a conclusion that the "Maine Indian Police Dept." is a "corporation." Nor is there anything in the Interlocal Agreement (Exhibit A of Mr. Crosby's brief) which indicates that the "Maine Indian Police Dept." is a "corporation." Accordingly, 5 M.R.S.A. § 1092 is inapplicable.

5 M.R.S.A. § 1091 provides that "Any person who shall become an employee shall become a member of the retirement system as a condition of employment. . . ." 5 M.R.S.A. § 1001, subsection 10, defines "Employee" as follows:

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"'Employee' shall mean any regular classified or unclassified officer or employee in a department, including, for the purposes of this chapter, teachers in the public schools,"

22 M.R.S.A. § 4716 provides:

"1. Appointment. The tribal governor, with the advice and consent of the tribal council, is authorized to appoint one or more Indians, age 18 or over, in each of the Indian tribes in this State, as special constables with like powers and duties of constables and police officers within towns and cities, in the enforcement of the laws of the State, within the limits of the reservation of his tribe, with authority to take any offender before any court of competent jurisdiction within his county. Such constables shall act as school attendance officers for their respective tribes. They shall receive such compensation as may be determined by the department.

"2. Term of office. Said constables shall be appointed for a term of 2 years from the date of their appointments or until their successors have been duly appointed and qualified. Any constable may be removed by the tribal governor upon recommendation of the department."

After careful consideration, these provisions seem to us to fall short of conferring upon the Commissioner of Indian Affairs control over the appointment and removal of an Indian Constable. His selection and appointment seems to be left entirely to the discretion of the Tribal Governor and the Tribal Council. While the Commissioner does have power to determine his compensation, and to recommend his removal, the statute does not seem to authorize the Commissioner to disapprove the appointment nor to compel removal.

It also appears that the constable is appointed for a term of 2 years. This term and the method of selection and appointment are not consistent with an appointment to the classified service. See 5 M.R.S.A. § 671. Such an appointment is not recognized in any of the categories of the unclassified service. See 5 M.R.S.A. § 711.


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It is also noted that if the Indian Constable were deemed to be a State employee, membership in the State Retirement System would be compulsory and such membership would preclude social security coverage. See 5 M.R.S.A. § 1222, subsection 3. However, we are informed that the Indian Constable is now under Social Security coverage.

It is further noted that if the Indian Constable is deemed a State employee, whether classified or unclassified, he can appeal an employee grievance or dispute to the State Employees Appeals Board. This result would not seem to be consistent with the provisions of 22 M.R.S.A. § 4716.

Accordingly, the current statutory provisions relating to Indian Constables provide an insufficient basis for the conclusion that the Legislature intended that such constable should be a State employee.

We note that the Legislature is about to come into session, and we are sending a copy of this opinion to the Commissioner of Indian Affairs and to Mr. Crosby in order that they may consider the desirability of requesting the Legislature to make such amendments to the pertinent statutes as they may deem appropriate.


CHARLES R. LAROUCHE
Assistant Attorney General

CRL:mfe

enc.

cc: John Stevens, Commissioner
David C. Crosby, Esquire