

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date July 8, 1975

To W. G. Blodgett, Ex. Director

Dept. Maine State Retirement

GARY R. King, Field Examiner DGA

Dept. Attorney General

From Donald G. Alexander, Assistant

Subject Indian Constables eligibility to participate in Social Security under the State agreement

The memorandum of June 20, 1975 from Mr. Eng requests determination of two questions:

1. Who is the employer of Maine Indian Constables, and
2. Whether the employing entity is a political subdivision of the State.

Indian constables are appointed pursuant to 22 M.R.S.A. § 4716 by the Tribal Governor with the advice and consent of the Tribal Council. The Tribal Governor also has power of the removal of Indian Constables. Thus, the tribes are the employers as tribal leaders have hire and fire authority over constables. The source of funding for the constables is not relevant to the matter.

The Indian tribes are political subdivisions of the State of Maine for the purposes of 5 M.R.S.A. § 1222-6. In making this statement, however, it must be emphasized that it is limited to the question of whether such tribes are political subdivisions of the State for the purpose of the social security law.

Like municipalities, Indian tribes are subject to the regulation by the State, e.g. Title 21 M.R.S.A. Chap. 41 and 22 M.R.S.A. chapters 1351, 1353 and 1355. Under Title 22, Indian tribes have authority to appoint clerks with functions similar to town clerks (§ 4706) persons to oversee the poor, the highways and local health matters (§ 4705) constables with general law enforcement powers (§ 4716). The Indian tribes also have general powers to adopt ordinances (§ 4717) and establish school committees (§ 4719) and other functions similar to those possessed to municipalities within the State. With this authority the Indian tribes are distinct juristic entities as required by 5 M.R.S.A. § 1222-6.

The fact that budgets for Indian tribes are subject to State control does not bar them from being political subdivisions. This office has previously held that even an entity without taxing powers may be a political subdivision for the purposes of 5 M.R.S.A. § 1222-6 (see Opinion relating to Westbrook Housing Authority, August 2, 1972):

Further, although this office in its Opinion of December 17, 1974 indicated that a corporate structure was necessary in order for an entity to become a participating local district in the State Retirement System pursuant to 5 M.R.S.A. § 1092, such a clearly defined corporate structure does not appear necessary for purposes of 5 M.R.S.A. § 1222-6. Indian tribes are a special and unique governmental entity. They have many attributes of a corporation without being defined as such. However, lack of these technical words of definition does not limit the fact that Indian tribes are a juristic entity for the purposes of being a political subdivision of the State.

DGA/jg