

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date August 19, 1975

James B. Longley, Governor

Dept. Executive

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject Alternatives available to the State on Indian Township

This memorandum responds to your request to be advised of the alternatives available to the State regarding certain State owned buildings on Indian Township.

The State owns 3 buildings of a value and replacement cost of approximately \$18,000. These buildings are now occupied by Indian Police to the best of our knowledge, and the Bureau of Forestry is denied their use.

The following courses of action are legally possible. They in no sense are to be taken as the recommendations as to a preferred course of action by the Department.

## 1. JUDICIAL REMEDIES.

a. DAMAGES. The State could sue the Tribe for the value of the buildings. An action for damages has been successfully maintained in this State by a licensee when his fixtures were destroyed by the licensor. Salley v. Robinson, 96 Me. 474 (1902).

This approach would require a demand by you, as Governor, that the Tribe vacate the premises. Then, if they fail to comply, a complaint for damages could be filed.

b. REMOVAL. The buildings could be removed from the premises and relocated outside the Township. Even the underground tanks and pipes could be removed. Salley v. Robinson, supra, the Supreme Judicial Court having held "The principle is the same [that the licensee retains ownership and the right to remove upon revocation] [when] a part of the plant is underground." Id. at 479.

The State is entitled to a reasonable time after revocation in which to make such a removal. White v. Elwell, 48 Me. 360, 364 (1861). There the Court said, ". . . the proposition, that he [the licensor] could so revoke it that they [the licensees] would have no right to take it away, is absurd."

If this remedy is selected, the State may wish to secure an injunction to forbid interference by any person with the removal of the structure. The Attorney General may institute proceedings for the preservation of order and the protection of public rights. Withee v. Lane & Libby Fisheries Co., 120 Me. 121, 113A 22 (1921).

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An injunction should first be sought to confirm the State's right to remove the structures under these circumstances. An alternative site for the building should also be confirmed by Forestry. Forestry then should make arrangements for the removal of the building.

## 2. ADMINISTRATIVE REMEDIES.

a. TRANSFER. Transfer the building to the Department of Indian Affairs for use by the Tribe. Transfer would be governed by 12 M.R.S.A. 504, as amended by P.L. 1973, c. 761.

Under this alternative, the Director of the Bureau of Public Lands could transfer the State's interest in the building to Indian Affairs, upon such conditions as to payment and future use as the parties might agree. Such a transfer, made prior to October 1, 1975, would be subject to Legislative ratification.

b. SALE. The buildings could be sold in accordance with the provisions of 12 M.R.S.A. 504. Administrative sale could be made only upon the recommendation of the Director of the Bureau of Public Lands, and after advertising, to the highest bidder, and with the approval of the Governor and Council.

A minimum acceptable bid amount ought to be set.

The bid of the Tribe could be financed by Indian Trust Funds. 22 M.R.S.A. 4714 authorizes the Department of Indian Affairs "subject to the approval of the Governor and Council" to expend for the benefit of the Passamaquoddies "any portion of the fund of that tribe . . . provided the tribe whose funds are used shall consent to the expenditure at a meeting duly called for the purpose."

No sale could be made, of course, without a willing buyer.

## 3. LEGISLATIVE REMEDIES.

a. LEGISLATION. Upon your recommendation, the Legislature could surrender possession and control of the buildings to the Passamaquoddy Tribe.

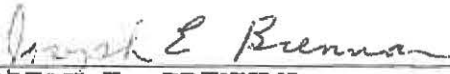
b. INDIAN HOUSING AUTHORITY. You could recommend that the Legislature convey the interest to the Tribe through a Resolve upon specified conditions. Me. Const. Art. IV, pt. 3, § 1. Here again, a willing buyer would be needed.

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Alternatively, you could recommend that the Legislature convey the structure to the Indian Housing Authority by loan, donation, grant, or contribution pursuant to 22 M.R.S.A. 4738.

c. OFFSETTING APPROPRIATIONS. As Governor, you could recommend to the Legislature that the State withhold from the next appropriation requested for the Passamaquoddy Tribe an amount commensurate with the State's loss. The money thus withheld could be appropriated to Forestry to finance the replacement building.

Again, I note these are recourses legally available, and not to be considered as recommendations of the Attorney General.

  
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JOSEPH E. BRENNAN  
Attorney General

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