

# MAINE STATE LEGISLATURE

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22. MRSA, 4793  
Legislature's Indian Legislation

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333  
April 19, 1977

Honorable John L. Martin  
Speaker of the House  
State House  
Augusta, Maine

Honorable Joseph Sewall  
President of the Senate  
State House  
Augusta, Maine

Re: L.D. 573 - AN ACT Providing for a Program for Destitute  
Persons on Indian Reservations and Appropriating Additional  
Funds for the Department of Indian Affairs.

Gentlemen:

In reviewing the engrossed bill of the above L.D., we noted that in Section 6 the bill contains a provision stating that no person can submit legislation to the Legislature that "directly affects" either the Penobscot or Passamaquoddy Tribe without first meeting with and conferring with the appropriate tribal governor and council.

We recently provided a memorandum opinion to Governor Longley, at his request, commenting on a similar provision currently in 22 M.R.S.A. § 4793. A copy of that opinion is enclosed. The analysis and conclusion of our previous memo to the Governor appears to be applicable to Section 6 of the engrossed bill and therefore raises serious questions about its constitutionality.

I thought it prudent to bring this to your attention prior to final enactment of L.D. 573.

Sincerely,

JOSEPH E. BRENNAN  
Attorney General

JEB:we  
Enclosure

To Joseph M. Hochadel

Dept. Executive

From John M. R. Paterson, Deputy

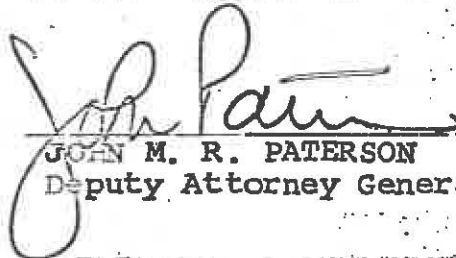
Dept. Attorney General

Subject Opinion Re 22 M.R.S.A. § 4793

Your memorandum of December 9, 1976, requests our opinion on the constitutionality of a portion of 22 M.R.S.A. § 4793, which reads:

"No private organization, church organization, state department, civic group or individual shall submit legislation affecting the Penobscot Tribe of Indians to the State Legislature without first bringing it before the Penobscot governor and council for approval."

We believe that the above-quoted section is clearly unconstitutional. The provision constitutes an impermissible limitation on the right of free speech, the right to petition the Legislature, and is a constitutionally impermissible delegation of legislative authority to a group other than the Legislature. See Maine Constitution, Art. I, § 4; Art. I, § 15; Art. IV, § 1, and United States Constitution, Amendment 1 and Amendment 14. The notion that legislation can only be offered to the Maine Legislature if first approved by another individual, organization, or group of any kind is so fundamentally repugnant to basic constitutional principles that we believe no further extensive citations in support of our conclusion are necessary.

  
JOHN M. R. PATERSON  
Deputy Attorney General

JMRP;mfe

exc  
DA  
4-17

# STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

S. P. 187 — L. D. 573

**AN ACT Providing for a Program of Support for Destitute Persons on Indian Reservations and Appropriating Additional Funds for the Department of Indian Affairs.**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, additional funds are necessary to provide basic necessities, such as food, clothing and fuel, to Maine Indians; and

Whereas, similar situations have occurred in the past and have a potential for future occurrence; and

Whereas, current statutes of the Department of Indian Affairs do not provide the basic language to initiate management control; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

*Be it enacted by the People of the State of Maine, as follows:*

**Sec. 1.** 22 MRSA § 4702, first ¶, as last amended by PL 1975, c. 293, § 4, is further amended to read:

The duties and powers heretofore given the Commissioner of Human Services relating to Indians, except their education and ~~except sections section 4713 and 4772~~, are transferred to the Department of Indian Affairs, hereinafter in this part called the "department," which is created to exercise general supervision over the Indian tribes.

**Sec. 2.** 22 MRSA § 4713, as last amended by PL 1975, c. 293, § 4, is repealed and the following enacted in its place:

§ 4713. Relief of Indians not members of tribes; statements; reimbursement

Whenever any Indian, or any member of the family of such Indian, is found destitute and in distress, and is relieved by the overseers of the poor of the municipality required by law to provide relief for such persons, pursuant to chapter 1251, the overseers of the poor shall transmit to the Department of Human Services a statement specifying the nature, dates and amounts of the assistance furnished and such other information as may be required by the Department of Human Services. The State shall reimburse municipalities for the expenditures made for the relief so furnished which the Department of Human Services considers to be reasonable and appropriate. The Department of Human Services may refuse to accept and pay any claim for reimbursement which is not submitted by a municipality to that department within 90 days of the payment upon which the claim is based.

Sec. 3. 22 MRSA §§ 4722 - 4725 are enacted to read:

§ 4722. Tribal relief of the poor

Tribal overseers of the poor, appointed in accordance with section 4705, shall have the care of all eligible persons whether or not they are members of the Passamaquoddy or Penobscot Tribes, who are found destitute and in distress upon tribal reservations and shall cause them to be relieved at the expense of the tribe.

The department shall reimburse the tribe for 100% of the amount expended for furnishing such relief which the department considers to be reasonable, appropriate and furnished in accordance with section 4723. Either the tribal overseers of the poor, or the tribal clerk, if authorized by the tribal governor and council, shall submit to the department a monthly return on forms provided by the department stating the amount of expenditures made for furnishing this assistance. The department may refuse to accept and pay any claim for reimbursement which is not submitted by a tribe to the department within 90 days of the payment upon which the claim is based.

Tribal overseers of the poor may arrange to have relief furnished to eligible persons by a vendor of services or goods. When relief is furnished by a vendor of services or goods, the tribal overseers of the poor shall obtain an invoice from the vendor indicating the cost, quantity and kind of services or goods furnished. The tribal overseers of the poor shall certify to the department that the invoice represents a charge for relief furnished in accordance with section 4723 and shall forward it, along with their certification, to the department for payment. The department shall pay the vendor directly the full amount indicated on the invoice, unless it finds that the relief so furnished was unreasonable, inappropriate and not furnished in accordance with section 4723. The department may refuse to make payment on any invoice which is not submitted to it by the tribal overseers of the poor within 90 days of the date upon which the relief was furnished.

The tribal overseers of the poor, as well as all other tribal officers having charge of the administration of assistance furnished pursuant to this chapter, shall keep full and accurate records of the names of persons relieved or supported, including the cost, quantity and kinds of relief provided to them. The records required under this section shall be maintained in such a manner and contain information in such detail as may be required by the commissioner. The records required to be kept under this section are subject to audit by the Department of Audit.

§ 4723. Program for relief; rule making

The program for tribal relief of indigent persons shall be operated and administered in accordance with written rules which shall include standards of eligibility based upon need and shall define the amount and kind of assistance to be furnished to eligible persons.

The commissioner shall promulgate these rules after consultation with the tribal governors within 6 months after the effective date of this Act. The rules shall not be effective until filed with the Secretary of State and the respective tribal clerks.

In addition to defining need and specifying the amount and kind of assistance available, the rules shall provide the following:

1. Application. All persons wishing to apply for relief shall have an opportunity to do so and relief shall be furnished to eligible persons within 24 hours of the time of application.

2. Action denying, reducing or terminating assistance. Any action denying, reducing or terminating assistance shall be communicated to the appli-

cant or recipient in writing and shall include the specific reason for such action making reference to the relevant sections of the rules upon which the decision was based.

3. Fair hearing. A fair hearing before a person or persons designated by the tribal governor who did not participate or have any responsibility for making the decision being questioned shall be available to any applicant who has been denied relief. The fair hearing shall be held within 7 days following the receipt of the request by an applicant for a fair hearing. The person requesting the hearing shall be afforded the right to confront and cross examine any witnesses against him, present witnesses in his own behalf and be represented by counsel or other spokesman and must be advised of these rights in writing. The decision of the fair hearing shall be based solely upon evidence presented at the hearing. The Maine rules of evidence shall not apply at the fair hearing. Within a reasonable time after the hearing, the applicant shall be furnished with a written decision detailing the reasons for it.

4. Pretermination hearing. A recipient of assistance shall be afforded a right to a pretermination hearing in the event that assistance of a continuing nature, which may be provided to him, will be terminated or reduced. The pretermination hearing shall be conducted in the same manner as outlined in subsection 3 for the conduct of fair hearings. The impending action of termination or reduction shall not be carried out until the pretermination hearing has been held, if requested, and written notice of the decision has been given to the recipient. The recipient shall be given a timely and advanced notice of termination or reduction in relief being provided which details the reasons for the proposed action and informs the recipient of his right to request a pretermination evidentiary hearing within 5 days following receipt of the notice. Nothing in this subsection shall be construed to require pretermination hearing when assistance is furnished for a stated period of time and the recipient is advised, in writing, of the time limitations at the time that eligibility for such assistance is communicated to him.

#### § 4724. Superior Court jurisdiction

Review of fair hearing and pretermination evidentiary hearing decisions shall be within the jurisdiction of the Superior Court and shall proceed in accordance with the Maine Rules of Civil Procedure, Rule 80B.

#### § 4725. Confidentiality of information

Records, papers, files and communications relating to an applicant or recipient made or received by persons charged with responsibility of administering this program of relief for indigent persons are confidential and no information relating to a person who is an applicant or recipient may be disclosed to the general public, unless expressly permitted by that person.

Sec. 4. 22 MRSA § 4771 is repealed.

Sec. 5. 22 MRSA § 4772, as last amended by PL 1975, c. 293, § 4, is repealed.

Sec. 6. 22 MRSA § 4793, last sentence, as enacted by PL 1973, c. 130, § 2, is repealed and the following enacted in its place:

No private organization, church organization, state department, civic group or individual shall submit legislation directly affecting the Penobscot or Passamaquoddy Tribe of Indians to the Legislature without first meeting and conferring with the respective tribal governor and council.

Sec. 7. 22 MRSA § 4837, as last amended by PL 1975, c. 293, § 4, is re-

Sec. 8. Appropriation. There is appropriated from the General Fund to the Department of Indian Affairs the sum of \$150,000 to carry out the purposes of this Act. The breakdown shall be as follows:

1976-77

INDIAN AFFAIRS, DEPARTMENT OF

All Other	\$140,000
Penobscot Indian Housing Authority	10,000
	<hr/>
	\$150,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

IN HOUSE OF REPRESENTATIVES,.....1977

Read twice and passed to be enacted.

.....*Speaker*

IN SENATE,.....1977

Read twice and passed to be enacted.

.....*President*

Approved.....1977

.....*Governor*