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Indian Scholarships
20 M.R.S.A. Chap. 301-A

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September 1, 1977

Honorable Michael D. Pearson
State Representative
221 South Fourth Street Extension
Old Town, Maine 04468

Dear Representative Pearson:

We are responding to your request for an opinion of this office on the question of an award of North American Indian Scholarships under the provisions of 20 M.R.S.A. Chapter 301-A. It is our understanding that the Indian Scholarship Committee, which is responsible for approving scholarship grants under Chapter 301-A, met during the month of July, 1977, and sent letters to applicant scholars awarding grants for the coming school year. These letters were apparently sent without knowledge by the Committee of legislative action by the 108th Legislature, which included a change in the definition of the term "North American Indians residing in Maine." Only applicants meeting this definition would be eligible to receive grants, and some of the applicants to whom the Committee sent its letters would not so qualify. Your question is whether the Committee must withdraw their awards to individuals who failed to meet this revised qualification.

The answer to your question is that any award of scholarships by the Committee to individuals who do not meet the current definition of "North American Indians residing in Maine" would be contrary to statute and must be considered as improperly granted. Furthermore, because of the unique sequence of legislative events described below, the Committee had no statutory authority to award any scholarships, regardless of the qualifications of the applicants, during the period from June 27, 1977 to July 25, 1977, and all grants made during this period would be ultra vires the powers and authority of the Committee.

Title 20 M.R.S.A. Chapter 301-A was enacted by P. & S. L. 1971, Chapter 179, effective July 1, 1972. This legislation established a scholarship fund, the Indian Scholarship Committee and qualifications for recipients of such scholarships. The funds were for the

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purpose of assisting in secondary or post-secondary education for "North American Indians residing in Maine." The term "North American Indians residing in Maine" was defined in § 2206 as ". . . either those persons whose names are included upon the current tribal census of either the Passamaquoddy or Penobscot Tribes of Indians or those persons who have resided in Maine for at least five consecutive years and at least one of whose parents or grandparents were either included on the census of the Passamaquoddy or Penobscot Tribes or held a band number of the Maliseet or Micmac Tribes." This definition was amended by P. L. 1977, Chapter 133, which would have become effective 90 days after a recess of the Legislature on July 25, 1977, pursuant to Article IV, Part Third, Section 16 of the Constitution. The amendment changed the definition to include, essentially, persons on the Passamaquoddy or Penobscot Tribal census or members of the Maliseet or Micmac Tribes who can prove they have 1/4 Indian blood and who have resided in Maine for five years immediately preceding their application for the scholarship.

However, P. L. 1977, Chapter 389, Part B, Section 3, which was enacted and effective as of June 27, 1977, as an emergency measure, repealed the entire chapter 301-A as amended. Therefore, as of June 27, 1977, there was no statutory authority for awarding any scholarship grants regardless of the qualifications of the applicants

Further amendment to 20 M.R.S.A. § 2206 was proposed in L.D. 189 without reference to the interim repeal of the entire chapter. However, this L.D. was never enacted. Finally, P.L. 1977, Chapter 579, Park H, Section 1, re-enacted 20 M.R.S.A. Chapter 301-A, as repealed by P.L. 1977, Chapter 380, discussed above. The re-enacted version of section 2206 was in the form as it was amended by Chapter 133. In addition, Chapter 579 specified that sections 2205 - 2210 would remain in effect only until June 30, 1978, and there was appropriated the sum of \$55,000 for these scholarships for the year 1977-78.

The sequence of legislative events described above results in the following summary. In light of the emergency repeal of the entire law authorizing Indian scholarships by Chapter 380, the Scholarship Committee had no legal authority or power to grant any scholarships subsequent to the effective date of that Chapter, June 27, 1977. The powers and authorities were reinstated as of July 25, 1977, when the Chapter was re-enacted by Chapter 579 on an emergency basis. Therefore, any scholarship grants which the Committee purported to make during this period from June 27 to July 25 would have been outside of the scope of the Committee's powers and authority, would be void, and should be ratified at this time if they are to be legally made.

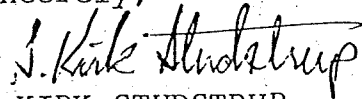
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Furthermore, in light of the one year appropriation for the fund and the self-limiting provisions of the sections of Chapter 301-A, it is clear that the Legislature intended the amended qualifications for receipt of scholarships set forth in the definitional section 2206 to apply to recipients during the 1977-78 school year. Therefore, grants to individuals who do not meet these qualifications, whether made before or after July 25, 1977, would also be beyond the scope of power and authority of the Committee and should be withdrawn.

Sincerely,



S. KIRK STUDSTRUP

Assistant Attorney General

SKS:jg