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STATE OF MAINE

Inter-Departmental Memorandum Date October 31, 1977

To Charles Rhynard, Commissioner

Dept. Indian Affairs

From Kate Flora, Assistant

Dept. Attorney General


Subject Certification of Indian School Board Elections

This opinion supersedes that part of the opinion of September 29, 1977, designated question 2 which deals with certification of tribal school board election results. In the earlier opinion, it was indicated that tribal election results were to be certified by voting registration commissioners appointed by the Secretary of State. This was error insofar as it applies to local tribal elections. A closer reading of Title 21 M.R.S.A. § 1622 suggests that this section is intended to apply only to State, Federal and Primary elections.

Title 22, M.R.S.A. §§ 4792 and 4831, dealing with tribal elections, provides that the results shall be certified by the Commissioner or his authorized representative. Section 4702 provides that throughout Part 6 of Title 22, the Commissioner of Indian Affairs shall be referred to as "the commissioner". It is therefore logical to assume that "the commissioner" referred to in §§ 4792 and 4831 who is to certify election results is the Commissioner of Indian Affairs. Therefore, I conclude that you or your authorized representative must certify the tribal election results.

In the event of a vacancy in your office, appointment of a Deputy Commissioner by the Governor would be necessary before tribal election results could be certified. This is so because there cannot be an authorized representative of a person unless the person to be represented exists.

I would note, since your initial question was addressed to certification of school committee elections, that Title 22 M.R.S.A., § 4719, which deals specifically with the election of school committees for the 3 Indian voting districts, is silent on the question of certification. Therefore, there appears to be no specific requirement that elected school board members be certified. However, as there is no prohibition of certification, the decision of whether or not to certify Indian school committee elections would be within your discretion.



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Assistant Attorney General

KCF:jg