

MAINE STATE LEGISLATURE

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*Retirement: Indian Tribes
Indian: Retirement System eligibility*

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To: W. G. Blodgett, Executive Secretary, Maine State Retirement System
From: Joseph E. Brennan, Attorney General
Subject: Eligibility of the Indian Township Tribal Government to
Participate in the Maine State Retirement System as a
Local District

This responds to your request for an opinion as to whether the Indian Township Tribal Government of the Passamaquoddy Indian Tribe is eligible to participate in the Maine State Retirement System as a local district under 5 M.R.S.A. § 1001(11-A).

It appears that the Tribal Government took the steps necessary under 5 M.R.S.A. § 1092 to participate as a local district and so notified the System. By return letter, the usual request was made that the Tribal Government supply the System with any documents defining its organizational character and function, so that the determination could be made as to its eligibility to participate^{1/} under the statutory definition. No such documents were supplied. Thus, it is necessary to determine the issue of the eligibility on the basis of the statutes which govern the establishment and operation of the Tribal Government, 22 M.R.S.A. § 4701, et seq.

On the basis of these statutes, it appears that the Tribe exists in a unique relationship to the State, functioning in general as an

^{1/} A copy of a brief written by tribal counsel in connection with a somewhat different issue was supplied. While it provided useful references, the brief cannot supply the basis for a decision of the question at hand.

independent political subunit of the State yet subject to closer State supervision and control than the more familiar subunits. The structure and function of the Tribal Government is sufficiently analogous to those of towns and cities to bring it within the scope of the term "municipality" as used in sub-§ 11-A. Further, the Tribal Government comes within the broad definition of "municipality" adopted by the Maine court. Thus, on proper application to the Retirement System, the Tribal Government is entitled to participate therein as a local district.

OPINION:

Eligibility to participate as a local district in the Retirement System is determined in the first instance by the terms of 5 M.R.S.A. § 1001(11-A), which provides:

Local district. "Local district" shall mean any county, municipality, quasi-municipal corporation, incorporated instrumentality of the State or of one or more of its political subdivisions, or any incorporated association of employees of the State or of such local districts, or incorporated association of such local districts, or any entity eligible to become a participating local district, or presently participating in the system, under this section as in effect immediately prior to January 1, 1976.

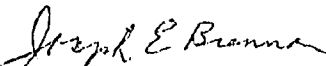
Of the possibilities enumerated in the subsection, "municipality" alone provides a potential category within which the Tribal Government might be included. The Tribal Government and the reservations it governs are nowhere generally defined as municipalities, nor do the statutory sections related to the Government and the reservations appear as part of the general municipal law. Nonetheless, it appears from those statutory provisions that the Government and the reservations possess many of the qualities of "municipalness." Some of these qualities are subject to greater statutory limitations than apply to municipalities in general under present law; the State exercises more supervision and control over the Tribal Government and the reservations than over municipalities in general. In my opinion, however, these limitations and this degree of State supervision do not negate the municipal nature of the Government and the reservations. All municipalities are, after all, creations of the State, and within constitutional and statutory limits, the State may shape its creations as it will.

The Tribal Government is a locally elected body, 22 M.R.S.A. § 4831-A, having authority to appoint Tribal officials, §§ 4706(1); 4716(1), and to enact ordinances and regulations approved by the Tribe, § 4717. Tribal clerks and constables are expressly given the same powers and duties as their town and city counterparts, §§ 4706(2); 4716(1). School committees are elected by the inhabitants of each reservation, and are directed to carry out their responsibilities "in accordance with the general laws applying to public schools," § 4719. The committees jointly choose a superintendent. While the appointment, its term and compensation are subject to approval of the Commissioner of Educational and Cultural Services, the duties of the superintendent are "the same as public school superintendents under the general law." In the areas in which the reservation school committees act independently of each other, they act as administrative units and are to conform to the relevant general law.

In my opinion, the above statutory provisions are sufficient to constitute the Indian Township Tribal Government a municipality within the scope of the Retirement Law definition. In addition, the Government comes within the observation of the Maine court that

. . . the term municipal relates not only to a town or city, as a territorial entity, but it also pertains to local self-government in general, and in a broader sense to the internal government of the State.

City of Augusta v. Augusta Water District, 101 Me. 148, 151, 63 A. 663 (1906). The Tribal Government is unquestionably a form of "local self-government" and a part of the "internal government of (the) State." Accordingly, it falls within the scope of sub-§ 11-A, which makes available to local governmental bodies the opportunity to participate in the Retirement System.



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