

MAINE STATE LEGISLATURE

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RICHARD S. COHEN
ATTORNEY GENERAL



REPLY TO:
DEPARTMENT OF MANPOWER AFFAIRS
EMPLOYMENT SECURITY COMMISSION
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AUGUSTA, MAINE 04330
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STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

June 19, 1979

Commissioner David W. Bustin
Department of Manpower Affairs
20 Union Street
Augusta, Maine 04330

Re: Tribal Indian Organizations

Dear Commissioner Bustin:

You have requested an opinion from this office as to whether the tribal Indian organizations of the State of Maine constitute "governmental entities" within the meaning of the Maine Employment Security Law.

We answer in the affirmative.

Amendments to the Maine Employment Security Law during the 1977 legislative session extended coverage for unemployment compensation benefits to employees of the State of Maine or any of its political subdivisions. The definition of "covered employment" within the meaning of the Employment Security Law, found at 26 M.R.S.A. § 1043 (11)(A-1)(1), now includes:

"... service performed after December 31, 1977, in the employ of this State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality ..."

The question that is now posed is whether the tribal Indian organizations of the State of Maine constitute instrumentalities or political subdivisions within the meaning of the statute.

The Federal Unemployment Tax Act (FUTA) does not define the terms instrumentality or political subdivision, and the United States Department of Labor has stated that "what constitutes a governmental entity in any particular case will, in general, be controlled by State statutes creating the entities and prescribing their scope."^{1/} The legislative history of the 1977 Maine amendment is silent as to the definition of an instrumentality or political subdivision.

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A political subdivision is generally defined as a body politic constituting a legal entity and authorized to exercise subordinate specified powers of legislation and administration relative to local affairs. Municipal Corporations 56 Am. Jr. 2d § 4. Title 22, Part 6, of the Maine Revised Statutes addresses the status of the Maine Indian tribes. Both the Penobscot and Passamaquoddy tribes are authorized by Maine Statutes to conduct tribal elections for the purpose of selecting a governor and council to conduct the affairs of the tribes. The tribal governors and councils are specifically authorized to prepare ordinances and rules for adoption by the tribes, appoint constables with the same powers and duties of police officers of cities and towns, appoint tribal clerks, elect school committees, and perform other necessary functions relating to the administration of the tribes.

It is clear that the Indian tribal governments perform the same functions and provide similar services as do other political subdivisions of this State. The Legislature has granted to the Indian tribes, as it has granted to other political divisions, authority to act in specific areas. The Indian tribal governments do act as the local governing authorities for those tribal members living within their jurisdictions. These tribal organizations do, therefore, constitute governmental entities within the meaning of the Employment Security Law.

Sincerely yours,


Patricia M. McDonough
Assistant Attorney General

PMM:er

1/ Questions and Answers Supplementing Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976-P.L. 94-566, December 7, 1976, p. 4.