

# MAINE STATE LEGISLATURE

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August 20, 1980

David T. Flanagan  
Counsel to the Governor  
Executive Department  
State House  
Augusta, Maine 04333

Re: Indian Education Financing for FY 1981

Dear Mr. Flanagan:

In your letter of August 12, 1980, you requested advice as to the source of funds that may be utilized by the State to assist in financing the education of Indian students who attend school off the Reservations. Since we understand this issue to be a matter of some urgency in order that arrangements can be made before the commencement of school this fall, we have attempted to respond to your question as promptly as possible. The necessity to do so has, however, placed some limits on our ability to research the matter as completely as possible. Among other things we have not been able to review all the legislative history of the various acts under which Maine Indian education has operated or all the possible relevant appropriations acts. However, in view of the discussion that follows, we think it unlikely that such history would affect our conclusions.

Title 22 M.R.S.A. § 4719 creates the school committees for the Indian Tribes and the method for supervision of and financing of Indian Schools.<sup>1/</sup> The section provides that the school committee shall "establish and operate a system of fiscal and personnel procedures in accordance with the general law as it applies to administrative units." The section also states in the first paragraph that the school committees are required to "approve all programs,

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<sup>1/</sup> For purposes of this opinion we assume, without deciding, that this and other Maine laws regulating and prescribing Tribal affairs are legally effective as to these Indian groups, inasmuch as the question posed by you relates to expenditure of State monies and not to the exercise of the State's regulatory power.

expenditures of funds and procurement of personnel in accordance with general laws applying to public schools." At first blush this provision might appear to qualify the Tribal schools as ordinary school units entitled to state funding in accordance with the Maine School Finance Act of 1978. However, for the reasons set forth below, we have concluded that § 4719 contemplates a separate legislative appropriation for Indian schools and the Maine School Finance Act is not available as a source of funding to these schools.

First, the remaining provisions of § 4719 contemplate a method of payment for Indian schools different from that applicable to ordinary school units in the State. In particular the last two paragraphs state:

"All expenditures must be authorized by the school committee. All bills and payrolls must be approved for payment by the superintendent of schools before being paid by the treasurer. The State Controller shall forward monthly to the treasurer such sum as may be requested by him, the annual total not to be in excess of the sum appropriated. The execution of the budget must be carried out within the funds made available and in accordance with the laws and state regulations governing fiscal responsibility. The accounts shall be audited by the State Auditor.

"The biennial budgets shall be drawn up by the superintendent and school committee and forwarded to the Commissioner of Educational and Cultural Services for his consideration and recommendation before being submitted to the Legislature."

These provisions indicate to us a legislative intent that funds for the operation of Tribal schools are to be separate and distinct from other General Fund appropriations for education generally.<sup>1/</sup> It is our understanding that Legislative and Executive conduct has been consistent with this reading of those sections. As far as we are aware, the Maine Department of Education has as a matter of regular practice requested separate legislative appropriations for Indian Education and the Legislature has separately appropriated funds for this purpose. See for example P.L. 1979, C. 164, Part B.

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<sup>1/</sup> Under § 4719, had the Tribes failed to elect school committees the Commissioner of Education would be statutorily authorized to provide for Indian education in the same manner as is done in unorganized territory. Such is not the case, however, as the Tribes have in place operational school committees.


Second, the Maine School Finance Act of 1978, 20 M.R.S.A. § 4741, et seq. provides further confirmation that the costs of operating the Indian schools is not to be included in this general education funding program. Specifically, § 4743(16)(H) states that "operating costs," which provide the basis, in part, for determining State aid to education, shall not include "[t]he Indian schools operated pursuant to Title 22 M.R.S.A. § 4719."

For the reasons stated above, we conclude that the method of funding Indian schools under § 4719 is by way of separate appropriation. Since no such appropriation was made for this fiscal year, the question arises as to whether there are other sources of funds which may be used to finance the Indian schools.

Our review of the other provisions of Maine law leads us to conclude that the only other statutory provision which could be utilized to pay expenses of Indian education would be the State Contingent Account established in 5 M.R.S.A. § 1507. Use of this account, as you know, is subject to authorization of the Governor.

I hope this advice is sufficient to meet your needs. Please feel free to contact us if we can be of further assistance.

Very truly yours,

  
RICHARD S. COHEN  
Attorney General

RSC:mfe