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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

October 30, 1981

Michael Petit, Commissioner
Department of Human Services
State House Station #11
Augusta, Maine 04333

Re: Applicability of General Assistance Laws within Indian Territory.

Dear Commissioner Petit:

Your letter of December 15, 1980, poses certain questions regarding the application and administration of Maine's General Assistance Laws, 22 M.R.S.A. §§ 4450-4508 to the Indian Tribes in view of the legislation implementing the settlement of the land claims dispute. That legislation is found in P.L. 1980, Chapter 732, effective December 12, 1980, and known as "The Maine Implementing Act" and P.L. 96-420, known as the "Maine Indian Claims Settlement Act." Those two Acts taken together provide the jurisdictional framework governing the State's future relationship with the Passamaquoddy Tribe and Penobscot Nation.

Generally those Acts provide that the two Tribes will be the functional equivalents of municipalities having the same rights, powers, duties and limitations as municipalities. Their municipal lands will consist of the current Tribal Reservations plus any land acquired in the future in Indian Territory. The lands eligible for inclusion in Indian Territory in the future are specifically identified in section 6205 of the Maine Implementing Act.

With the above general outline in mind, I have set forth below the questions posed by you and our answers to each.

1. For purposes of General Assistance, are Indian Reservations to be considered municipalities?

Technically the Passamaquoddy Tribe and the Penobscot Nation will each be a municipal entity. The land within the jurisdiction of each Tribal "municipality" will consist of its respective Reservation plus further acquired land in Indian Territory.

2. Given that the tribes received federal funds to administer welfare on reservations and federal regulations state that this is to be used for tribal members only, what is the Department of Human Services responsibility for services to non-tribal members on the reservation?

The answer to this question requires discussion of several aspects of the two acts and their relationship to Maine's general assistance laws.

First, a municipality is required to provide general assistance to all eligible residents and non-residents. 22 M.R.S.A. §§ 4497, 4504. The Department of Human Services must reimburse each municipality for 90% of its net general assistance expenses in excess of .0003 of its State valuation. 22 M.R.S.A. § 4499. The Penobscot Nation and the Passamaquoddy Tribe are entitled to the same reimbursements subject to certain limitations set forth in § 6211(2) of the Maine Implementing Act. 30 M.R.S.A. § 6211(2). Briefly summarized, the limitation states that when an Indian tribe receives federal funds for a purpose substantially similar to that for which it receives State funds, the federal funds will be treated as the municipal share of the municipal/state cost sharing formula with any excess federal funds being credited to the State's share.

As we understand it, the federal government currently provides local welfare assistance for all tribal members but such assistance, is, and may continue to be, restricted to tribal members. These funds are used to carry out a program which is substantially similar to Maine's general assistance program. 30 M.R.S.A. § 6211(2). Assuming that the Tribes only utilize such federal funds as local welfare and that such funds cannot be used to benefit non-tribal members, the State would have no obligation under the General Assistance Laws to reimburse the Tribes for any federal welfare funds distributed to Tribal members. The act of distributing federal welfare funds to Tribal members is not properly characterized as General Assistance under Maine law. General Assistance is a locally administered welfare program in which a municipality provides welfare to all municipal residents based solely on financial need criteria. Although the statute does not expressly so state, it is our view that a general assistance program cannot

include eligibility criteria based on Tribal membership or other ethnic criteria. Inclusion of such criteria would be inconsistent with constitutional equal protection principles. Similarly, 30 M.R.S.A. § 6206(1) provides that all residents of Indian Territory are entitled to receive all governmental services regardless of their tribal membership, except where authorized by State or Federal law. While the Tribe may lawfully limit the federal funds to Tribal members only, it may not do so and have such program qualify as municipal general assistance. The Tribal administration of a federal welfare program for Tribal members only would not qualify as General Assistance and the Tribe would not be eligible for State reimbursement. On the other hand, if there were no non-Tribal members residing on the Tribal lands or otherwise eligible for General Assistance, then the use of Tribal membership as an eligibility criteria would not make the program ineligible for State reimbursement.

Assuming that the Tribally-administered federal welfare program did qualify as General Assistance, under the provisions of 30 M.R.S.A. § 6211(2) the State would nevertheless have no actual financial obligation to the Tribe to reimburse it for General Assistance expenditures made solely from funds provided to the Tribe from the Federal Government. Section 6211(2) is an "offset" mechanism under which Federal monies received by a Tribe for a program similar to that funded by the State, are credited first to the Tribe's share of a State/local cost and then to the State's share. The General Assistance laws provides that the State will reimburse a municipality for 90% of its expenditures for local welfare when those expenditures exceed .0003 of the municipality's State valuation. 22 M.R.S.A. § 4499. For example, an expenditure of $1.00 of local General Assistance is reimbursed $0.90 by the State at the end of the year. If the dollar spent by the Tribe for General Assistance was solely from Federal sources, under § 6211(2) 10% of each Federal dollar would be attributed to the Tribe's cost and the remaining 90% would offest completely the State's reimbursement. There will be no obligation on the State to reimburse the Tribe for its expenditure of Federal funds. If, however, the Tribal general assistance consists partly of federal funds and partly of Tribal funds, then there would be a pro rata reimbursement by the State for that portion of the general assistance that was from non-federal monies. The exact method of computation would depend on the mix of federal/non-federal monies spent and would have to be calculated on a case-by-case basis. Since the Implementing Act does not specify a method of calculating the pro rata reimbursement, the Department would have some reasonable discretion in computing such reimbursement.

3. Is there a State valuation for each Reservation? If not, how should one be established? If one cannot be established, what is the basis upon which the Department of Human Services financial obligations should be established?

The State Tax Assessor is responsible under § 6211(1) of the Maine Implementing Act for establishing the State valuation of the Indian Reservations and Indian Territory. He will file his valuation with the annual State valuation provided to the Secretary of State for all municipalities.

4. Will jurisdiction on lands purchased by the Tribes as part of the settlement be altered in any fashion? Who will have responsibility for providing General Assistance to people who reside in those areas? Is the status of Indians or non-Indians any different in those areas?

As noted above, the lands acquired by the Tribes in pre-designated areas, heretofore unorganized territory, will be the Tribes' municipal lands. Jurisdiction over these lands will be affected in different ways depending on the subject. This opinion relates solely to the issue of General Assistance. If there are other specific jurisdictional questions which arise for the Department, we would be pleased to respond as needed.

Sincerely,

JAMES E. TIERNEY
Attorney General

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