

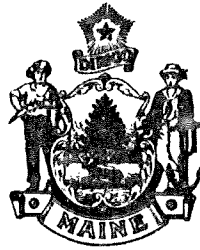
MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

JAMES E. TIERNEY
ATTORNEY GENERAL



Lib
82-12

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

February 18, 1982

Representative Michael H. Michaud
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Michaud:

I am writing to respond to the questions you raised in connection with draft legislation dealing with the Maine Indian Tribal-State Commission. The legislation as drafted would amend 30 M.R.S.A. § 6207, sub-§ 3, 3rd ¶ by repealing the second sentence as follows:

Said rules or regulations shall be equally applicable on a nondiscriminatory basis to all persons regardless of whether such person is a member of the Passamaquoddy Tribe or Penobscot Nation. ~~Regulations promulgated by the commission may include the imposition of fees and permits or license requirements on users of such waters other than members of the Passamaquoddy Tribe and the Penobscot Nation.~~ In adopting regulations pursuant to this subsection, the commission shall comply with the Maine Administrative Procedure Act.

You have asked us to answer three questions relating to this proposal. Your questions may be stated as follows:

1. Does the Maine Implementing Act, P.L. 1979, c. 732, prohibit the enactment of the proposed amendment?
2. If so, is the statutory prohibition violative of the Maine Constitution?

3. If the statutory prohibition is unconstitutional, does this affect the validity of all or part of the Maine Implementing Act and the accompanying federal legislation, The Maine Indian Claims Settlement Act of 1980, P.L. 96-420, 25 U.S.C. §1721, et seq.

Given your need for a prompt answer, our treatment of these questions will be brief.

The Maine Implementing Act, of which 30 M.R.S.A. § 6207 forms a part, was specifically approved by an Act of Congress.* The federal Act limits the power of the Maine Legislature to amend the Implementing Act with respect to either the Passamaquoddy Tribe or the Penobscot Nation. In cases where an amendment relates to "the enforcement or application of civil, criminal or regulatory laws of the Passamaquoddy Tribe, the Penobscot Nation, and the State within their respective jurisdictions", the Legislature must secure "the agreement of the affected tribe or nation." 25 U.S.C. § 1725(e)(1). Thus, if the proposed amendment to 30 M.R.S.A. § 6207 falls within the operation of the federal statute, the Legislature may enact it only with the approval of the Passamaquoddy Tribe and the Penobscot Nation.

It is clear that the primary purpose of the proposed amendment is to eliminate the license fee exemption which the Maine Implementing Act accords to members of the Penobscot Nation and the Passamaquoddy Tribe. Its effect is to allow the Maine Indian Tribal-State Commission the right to exercise its regulatory power over the Penobscot Nation and the Passamaquoddy Tribe in a manner which is now specifically forbidden by the Maine Implementing Act. In our opinion such a measure falls within the operation of 25 U.S.C. § 1725(e)(1). Accordingly, the Legislature cannot amend 30 M.R.S.A. § 6207 without the approval of the Penobscot Nation and the Passamaquoddy Tribe.

We are of the opinion that Congress acted constitutionally in enacting 25 U.S.C. § 1725(e)(1). It is well settled that Congress has absolute power over Indian Tribes and Nations. In the exercise of its powers Congress may limit a State's jurisdiction over Indian Tribes and Nations. Pursuant to Article VI of the U.S. Constitution, validly enacted federal laws supersede

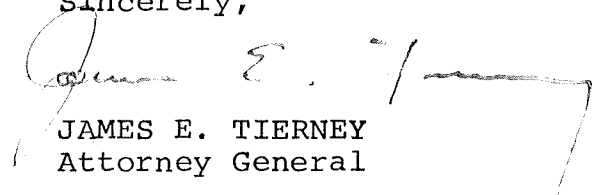
* 25 U.S.C. § 1725(b)(1) provides: "The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed."

state constitutional and statutory provisions. Thus, even if the restriction on amending the Maine Implementing Act could be said to violate the Maine Constitution, a point on which we express no opinion, that violation would be of no legal effect.*

In light of our answers to your first two questions, there is no need to answer the third question you raised.

I trust this was helpful. If we can be of further assistance, please feel free to call on us.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET:sew

* Article VI of the United States Constitution provides in pertinent part: "The Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."