

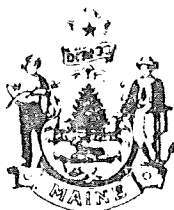
MAINE STATE LEGISLATURE

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JAMES E. TIERNEY
ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
STATE HOUSE STATION 6
AUGUSTA, MAINE 04333

July 25, 1984

Patricia E. Ryan
Executive Director
Maine Human Rights Commission
State House Station #51
Augusta, Maine 04333

Dear Ms. Ryan:

This will respond to your letter of April 25, 1984 in which you request an Opinion of this Department as to whether the Maine Human Rights Commission has jurisdiction to investigate complaints of unlawful employment discrimination against the Penobscot Nation.^{1/} For the reasons discussed below, it is the Opinion of this Department that the employment decisions of the Penobscot Nation, when acting in its capacity as a tribal governmental employer, are not subject to regulation by the State, and, therefore, do not fall within the jurisdiction of the Maine Human Rights Commission.

On November 18, 1983, the Maine Human Rights Commission received a complaint of unlawful employment discrimination against the Penobscot Nation and its Tribal Governor, alleging that the complainant's employment with the Penobscot Nation had been terminated on the basis of her sex in violation of the Maine Human Rights Act. (5 M.R.S.A. §§ 4551, et seq.). More particularly, the complainant alleged that she had been employed by the Penobscot Nation as its Director of Employment

^{1/} For the reasons discussed below, the conclusions reached in this Opinion are equally applicable to the Passamaquoddy Tribe.

and was fired from that position, because of her sex, by the Tribal Governor in a decision which was subsequently upheld by the Tribal Council. The Penobscot Nation, through its counsel, has previously stated its position to be that "[c]ivil rights disputes between employees of the tribe and the tribal government are internal tribal matters which are not subject to state regulation. . . ." pursuant to 30 M.R.S.A. § 6206(1).

It is now established that the relationship between the State of Maine and the Penobscot Nation is governed by the provisions of the Maine Indian Claims Settlement Act (30 M.R.S.A. §§ 6201-6214) which has been "approved, ratified, and confirmed" by the United States Congress. 25 U.S.C. §§ 1721(b)(3), 1725(b)(1). See Penobscot Nation v. Stilphen, 461 A.2d 478, 487 (Me. 1983), app. dis. 104 S.Ct. 323 (1983). The legislative findings and declaration of policy which became part of the Maine Act as 30 M.R.S.A. § 6202 recognize that the settlement was designed to resolve "far-reaching claims of various Maine Indians"^{2/} and "[t]o that end, the Passamaquoddy Tribe and the Penobscot Nation have agreed to adopt the laws of the State as their own to the extent provided in this Act." The general principle that state law will govern the relationship between Maine and the various Indians is more specifically articulated in 30 M.R.S.A. § 6204, which provides:

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the state and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or land or other natural resources therein.

With specific reference to the powers and duties of the Penobscot Nation, 30 M.R.S.A. § 6206(1) provides, in pertinent part:

Except as otherwise provided in this Act, the Passamaquoddy Tribe and the Penobscot Nation, within their respective Indian Territories, shall have, exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances

^{2/} Penobscot Nation v. Stiphen, 461 A.2d at 487.

and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State, provided, however, that internal tribal matters, including membership in the respective tribe or nation, the right to reside within the respective Indian Territory, tribal organization, tribal government, tribal elections and the use or disposition of settlement fund income shall not be subject to regulation by the State. (emphasis added).

In view of the foregoing, it seems apparent that a resolution of the question of whether the Maine Human Rights Commission has jurisdiction to investigate an allegation of unlawful employment discrimination against the Penobscot Nation turns on whether the employment decisions of the Nation, when acting as a tribal governmental employer, are "internal tribal matters" within the meaning of 30 M.R.S.A. § 6206(1). It is the Opinion of this Department that such decisions are "internal tribal matters" and are, therefore, not subject to regulation by the State of Maine.

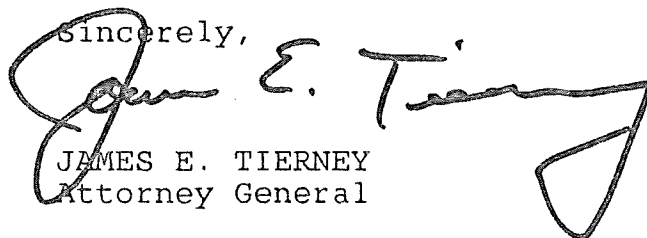
In Penobscot Nation v. Stilphen, 461 A.2d 478, 489 (Me. 1983), app. dismissed, 104 S.Ct. 323 (1983), the Maine Law Court held that the term "internal tribal matters" is to be construed by reference to the Maine Indian Settlement Act and its legislative history. In this connection, the Court noted that the term "internal tribal matters" is followed by an illustrative list of the types of matters, including tribal government, which are outside the reach of State regulation. The Court concluded that the term "embraces only those matters illustratively listed in the statute and other matters like them." 461 A.2d at 490. In reviewing the legislative history of the Maine Indian Settlement Acts, the Law Court held that the "internal tribal matters" exception to State jurisdiction was descriptive of those matters having unique cultural and historical importance to the Indians such that they should be free from State control. Id.

It is this Department's Opinion that the authority of the Penobscot Nation to control "tribal government" free of regulation by the State, necessarily includes within it the power to decide who will be an employee of the tribal government. It seems obvious that it is an integral component of tribal self-government to determine who will become an employee within the governmental structure of the Penobscot Nation. The legislative mandate that State regulation is not

to extend to matters of tribal government would become illusory if the Penobscot Nation, when acting in its capacity as a tribal governmental employer, is subject to the jurisdiction of the Maine Human Rights Commission. Subjecting employment decisions of the Penobscot Nation to the jurisdiction of the Maine Human Rights Commission would create a serious potential of State interference with the internal affairs of the tribal government, a result clearly not intended by the Maine Indian Settlement Act. Accordingly, it is the Opinion of this Department that decisions of the Penobscot Nation, as to who will be employed by the tribal government, are "internal tribal matters" not subject to regulation by the State and, therefore, not within the jurisdiction of the Maine Human Rights Commission.^{3/}

I hope this information is helpful to you, and please feel free to call upon this office if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Tierney". The signature is stylized and written over the typed name and title.

JAMES E. TIERNEY
Attorney General

JET/ec

^{3/} This conclusion is consistent with that reached by the Commission itself in a matter entitled Ranco v. Penobscot Nation, E81-0020 (November 15, 1982).