

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

September 9, 1985

James S. Henderson
Deputy Secretary of State
Station #101
Augusta, Maine 04333

Dear Mr. Henderson:

This will respond to your letter of August 28, 1985, in which you ask whether the filing on August 21, 1985 with the Office of the Secretary of State of Resolution No. 8-13-85-1 of the Penobscot Nation complies with the requirements of Section 2 of Chapter 69 of the Public Laws of 1985. For the reasons which follow, it is the opinion of this Department that the filing of the Resolution on August 21, 1985 did not occur within 60 days of the Legislature's adjournment as required by P.L. 1985, c. 69, § 2, and therefore that Public Law, by its very terms, "shall not be effective."

On April 5, 1985, Governor Brennan approved Chapter 69 of the Public Laws of 1985, being "An Act Relating to the Time of Penobscot Nation Trust Land Acquisition." Section 1 of the Act amended 30 M.R.S.A. § 6205(2) to extend from January 1, 1986 to January 1, 1987 the time period within which certain lands may be acquired which would qualify as "Penobscot Indian Territory." Section 2 of the Act provides in relevant part as follows:

This Act shall not be effective unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Governor and Council of the Penobscot Nation that the nation has agreed to the provisions of this Act pursuant to the United States Code, Title 25, Section 1725(e)(1)

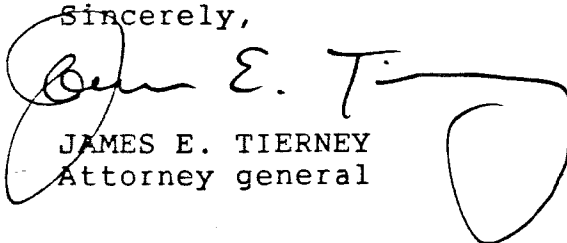
Resolution No. 8-13-85-1 of the Penobscot Nation, approving Chapter 69 of the Public Laws of 1985, was adopted by the Penobscot Nation on August 13, 1985, and was certified by the Governor of the Nation. The Secretary of State received the Resolution and the certification on August 21, 1985.

The 112th Legislature adjourned on June 20, 1985. The 60th day following adjournment occurred on August 19, 1985. Accordingly, the Secretary of State did not receive the necessary Resolution and certification within the 60-day period following adjournment of the Legislature, and by the very terms of Section 2 of the Act, it does not become effective.

It would appear that the only remedy for this problem is for the Legislature to reenact the provisions of Chapter 69 either during a special session or during the Second Regular Session of the 112th Legislature. While this is unfortunate, I feel it is especially necessary to be strict in interpreting these provisions in that it deals with the question of land acquisition. Indeed, any other conclusion but the one contained in this decision could render a land transaction subject to legal challenge by third parties. In the long run, this could lead to a clouded title which could prove a disadvantage to both the tribe and the state.

I hope this information is helpful to you, and please do not hesitate to contact this office if we can be of further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "James E. Tierney". The signature is fluid and cursive, with a large loop at the end of the last name.

JAMES E. TIERNEY
Attorney general

JET/ec

cc: Hon. Priscilla Attean
Andre Janelle