

MAINE STATE LEGISLATURE

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

April 28, 1986

John G. Melrose
Executive Director
Maine Indian Tribal-State Commission
P.O. Box 87
Hallowell, Maine 04347

Dear Mr. Melrose:

This will respond to your letter of April 11, 1986, in which you request an opinion of this Office as to whether 30 M.R.S.A. § 6205(5) provides an alternative procedure whereby land acquired by the Passamaquoddy Tribe and the Penobscot Nation may become designated as "Indian territory." In particular, you have asked whether such an alternative procedure is available even if the deadlines for acquiring land pursuant to 30 M.R.S.A. §§ 6205(1)(B) and (2)(B) have expired. For the reasons discussed below, it is the Opinion of this Department that Section 6205(5) does provide an alternative mechanism whereby lands acquired by the Penobscot Nation and the Passamaquoddy Tribe can become designated as "Indian territory," notwithstanding the expiration of the deadlines established in subsections 1 and 2 of § 6205.

30 M.R.S.A. § 6205(1) and (2) provide that "[s]ubject to subsections 3, 4 and 5," certain lands within the State of Maine shall be known as the "Passamaquoddy Indian territory" and the "Penobscot Indian territory." The land designated as "Indian territory" includes the Passamaquoddy Indian Reservation, the Penobscot Indian Reservation, and the first 150,000 acres of land acquired by the Secretary of the Interior of the United States for the benefit of the Passamaquoddy Tribe and the Penobscot Nation from certain designated areas and

lands acquired by the Secretary prior to April 1, 1988. 30 M.R.S.A. § 6205(1) and (2), as amended by Chapters 637 and 639 of the Public Laws of 1985. Land which is acquired pursuant to the provisions of subsections 1 and 2 of 30 M.R.S.A. § 6205 is automatically part of the "Indian territory" of either the Passamaquoddy Tribe or the Penobscot Nation, respectively, without any further action on the part of the Maine Legislature.

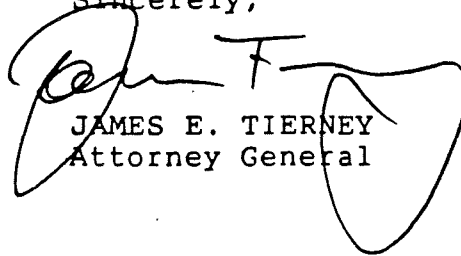
Subsection 5 of 30 M.R.S.A. § 6205, on the other hand, provides an alternative procedure whereby the Passamaquoddy Tribe and the Penobscot Nation can acquire land which will become designated as part of the "Indian territory." That statute provides in relevant part as follows:

No lands held or acquired by or in trust for the Passamaquoddy Tribe or the Penobscot Nation, other than those described in subsections 1, 2, 3 and 4, shall be included within or added to the Passamaquoddy Indian territory or the Penobscot Indian territory except upon recommendation of the commission and approval of the State to be given in the manner required for the enactment of laws by the Legislature and Governor of Maine, provided, however, that no lands within any city, town, village or plantation shall be added to either the Passamaquoddy Indian territory or the Penobscot Indian territory without approval of the legislative body of said city, town, village or plantation in addition to the approval of the State.

The language of subsection 5 appears to be clear and unambiguous and, in this Department's opinion, must be interpreted "to mean exactly what it says." Davey v. Lincoln County, A.2d (Feb. 28, 1986), slip op. at 6; Concord General Mutual Insurance Co. v. Patrons-Oxford Mutual Insurance Co., 411 A.2d 1017, 1020 (Me. 1980). It is obvious that by enacting subsection 5, the Legislature intended to create an alternative mechanism for adding land to the Passamaquoddy and Penobscot Indian territories provided that the addition of such land was upon the recommendation of the Maine Indian Tribal-State Commission and received the approval of the Legislature and the Governor in the manner required for the enactment of laws.

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,



JAMES E. TIERNEY
Attorney General

JET/ec

cc: Andre G. Janelle