

MAINE STATE LEGISLATURE

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

August 3, 1987

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

Dear Mr. Melrose:

I am writing in response to your recent inquiry concerning the identification of lands eligible for inclusion within the "Indian Territory" of the State pursuant to Section 6205 of the Maine Indian Claims Settlement Act, 30 M.R.S.A. § 6201, et seq. Specifically, you ask whether the transfer of land by one of the owners enumerated in Section 6205 would result in the removal of that land from eligibility to be included in "Indian Territory," if it should later be purchased by either the Passamaquoddy Tribe or Penobscot Nation. For the reasons which follow, it is the Opinion of this Department that the enumeration of owners in Section 6205 was for purposes of identification of the lands in question only, and the transfer of land by any of them to persons not enumerated would not render such land ineligible for inclusion in "Indian Territory."

The Maine Indian Claims Settlement Act was enacted in 1980 to implement the federal Maine Indian Claims Settlement Act of 1980, 25 U.S.C.A. § 1721, et seq. Included among its provisions was one designating certain areas of land in Maine as eligible for purchase by either the Passamaquoddy Tribe or Penobscot Nation. This land is identified in the statute by reference to its owners at the time of the enactment for the Act. 30 M.R.S.A. § 6205(1)(B) (Passamaquoddy Tribe) and (2)(B) (Penobscot Nation). Since the time of the enactment of the Act, however, some of this land has been transferred to other persons. For example, you indicate that the lands of the

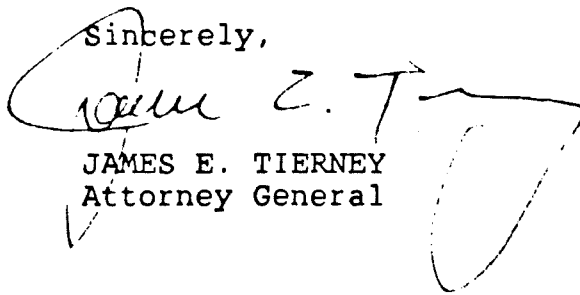
Diamond International Corporation in the Town of Argyle enumerated as part of the land set aside for potential inclusion in the Passamaquoddy Indian Territory have been transferred to another owner. Your question, therefore, is whether such a transfer removes the land in question from eligibility to be included in "Indian Territory."

The legislative history of the provision in question is silent on the point, but there is nonetheless little doubt that the Legislature did not intend by its use of the names of the owners of the lands in question in 1980 that the transfer of land by one of these owners should remove it from eligibility for inclusion in "Indian Territory." Rather, the Legislature's purpose in utilizing the names of the owners in the statute was simply to identify, without an elaborate provision setting forth the metes and bounds of the parcels in question, the lands to which the Act applied. In this regard, it should be remembered that the designation of a particular parcel of land as eligible for inclusion in "Indian Territory" imposes no restriction on its alienation; the only significance of a parcel's enumeration in Section 6205 is that if the Penobscot Nation or Passamaquoddy Tribe should eventually purchase it on the open market, it would be included in "Indian Territory." Thus, the Legislature did not intend that the owners of the parcels in question in 1980 be restricted from transferring the lands elsewhere. Rather, by identifying the lands by owners, it intended only to fix the identity of the parcels in question, without regard to actual ownership.

It thus appears clear that the boundaries of "Indian Territory" were established by the Legislature in 1980 to be the boundaries of the lands referred to in Section 6205. Any additions or deletions in the ownership interests of the landowners at the time, therefore, would not affect the boundaries of "Indian Territory."

I hope the foregoing responds to your question. Please feel free to reinquire if further clarification is necessary.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET/ec

cc: Jennifer Wriggins, Esq.
Counsel to the Passamaquoddy Tribe
and the Penobscot Nation