

MAINE STATE LEGISLATURE

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June 16, 2000

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Re: Aroostook Band of Micmacs

Dear John:

I have now had a chance to retrieve my original file concerning the settlement with the Aroostook Band of Micmacs. I have not found anything in my files that indicates that the Band filed a certificate with the Secretary of State as apparently required by the original state legislation implementing the Aroostook Band of Micmacs Settlement Act. See Chapter 148 of the Public Laws of 1989, § 4 (approved May 18, 1989). The Secretary of State's Office has informed me that they cannot locate such a certificate and Nan Heald of Pine Tree Legal Assistance in Portland, who was counsel to the Band of Micmacs throughout the settlement process, has checked her files and cannot find any certificate. She also indicated to me that she contacted Washington counsel who had no knowledge of such a certificate.

What I suspect happened is the following: the State Implementing Act originated as L.D. 272 in the 114th Maine Legislature (1st Regular Session - 1989). The original bill contained a section 8 dealing with its effective date. That provision only provided that it would be effective if the United States enacted appropriate legislation ratifying the Implementing Act without modification and providing the consent of the United States for amendments to the Implementing Act provided the Aroostook Band of Micmacs agreed. There was nothing in the original L.D. which called for the filing of a certificate by the Band.

There appears to have been two amendments to the L.D. The first was Committee Amendment "A" and appears to have redrafted the bill in its entirety. Once again, however, with respect to the effective date provision on the Committee Amendment, it only provided that effectiveness would depend upon the legislation by the United States ratifying and approving the Implementing Act without modification and providing for the consent of the United States for amendments to the Implementing Act provided the Aroostook Band of Micmacs agreed. House Amendment "A" to Committee Amendment "A" added the provision dealing with the effective date of the Implementing Act and

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required that within 60 days of the adjournment of the Legislature, the Secretary of State was to receive a written certification by the Council of the Aroostook Band of Micmacs that the Band had agreed to the Implementing Act. Receipt of such certification was a condition of effectiveness of the Implementing Act.

As so amended, L.D. 272 was enacted into law and approved by the Governor on May 18, 1989.

My suspicion is that because the effective date language came in as a committee amendment shortly before enactment, members of the Band and perhaps Nan and others simply overlooked the certification requirement.

Have you had any luck checking with the Band itself to determine whether it has any records that would indicate it filed the appropriate certification?

What does the Band want to do about this, if anything?

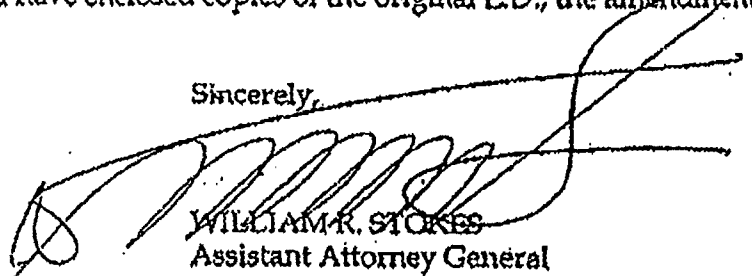
Having now been advised of this situation, I am concerned that the Maine Implementing Act never became effective notwithstanding the enactment by the United States of legislation ratifying and approving it. I am not sure what the result is, but I suspect that the original State Implementing Act which dealt with the Penobscot Nation, the Passamaquoddy Tribe, and the Houlton Band of Maliseets, and all other Indian tribes, bands, and Indians, would still have application.

It seems to me that the situation can be easily remedied by bringing this to the attention of the Legislature next session and correcting this error by having the appropriate certification filed by the Band.

Please let me know what it is you want to do, what authority you have to represent any official of the Band, and what the next step is.

For your convenience, I have enclosed copies of the original L.D., the amendments to it, and the enacted law.

Sincerely,



WILLIAM R. STOKES
Assistant Attorney General

WRS:mhs
Enclosure
cc: Nan Heald, Esq.