

To: Bill
From: Tim
Re: Maine Indian Land Claims Legislation
Date: 8/28/80

On the plane to Maine last night, I ran into George Mitchell who said that you and he are to meet with Cecil Andrus on Wednesday.

This memo is a brief synopsis of the disagreement between Interior and the State. I have appended a second memorandum which summarizes the history of the proposals offered by the State and the Administration to resolve the impasse.

At the heart of the problem is the Indian tribes' new status as municipalities under the Maine Implementing Act. The municipality concept was adopted because it was believed to be the best device to ensure that the tribes remained under Maine law and did not take on the substantial attributes of sovereignty which characterize many of the tribes in the West. The municipality construct was also seen as the best way of tying the tribes irrevocably to Maine law: a body of law with a substantial history of case law behind it. By endowing the tribes with the characteristics of municipalities, the State believed it was avoiding the creation of a "nation within a nation" which Governor Longley had so vigorously decried.

The State and tribes realized, however, that, as municipalities, the tribes would be eligible for state municipal-aid programs and, at the same time, would be eligible for federal assistance based on their status as federally recognized tribes. In drafting section 6211(2) and (4), the provision which has proved so controversial, the State was, in part, trying to ensure that this combination of federal and State assistance did not result in a duplication of services to the tribes. In other words, for example, the State was attempting make certain that each Indian classroom did not have two teachers, one paid by the state and one by the Bureau of Indian Affairs.

After analyzing the provision, the Administration became apprehensive that it would have the effect of forcing the federal government to assume the State share of its obligations toward the tribes as municipalities whenever the federal government decided to fund the tribes in an amount greater than that represented by the combined effort of the tribe as a municipality and state under its municipal assistance programs. The following example will illustrate the point:

Suppose, for purposes of illustration only, the State, through its school funding formula, that the share it owed to the Passamaquoddy tribe as a municipality was \$25,000.

Suppose, through that same formula, the amount the Passamaquoddy tribe owed to meet the state entitlement was \$75,000.

The total formula, then, would amount to \$100,000.

All parties agree that, at this point, the federal government could assume all of the amount due the Passamaquoddy tribe without relieving the State of its obligation to supply the \$25,000.

The problem arises when the federal government decides that, the \$100,000 to be spent on the tribe's schools is insufficient to provide the proper quality of education and determines to contribute some more.

*At this point, if the federal program under which the additional money would flow to the tribe is found to be "substantially similar" to a State program, then section 6211(2) would require that, for each additional dollar the federal government provides, the state share is reduced pro tanto. Thus, the additional federal contribution effects a dollar for dollar reduction of the amount due under the State entitlement program.

Therefore, in the example given above, if the federal government decided that the proper amount of money necessary to secure a quality education for the Passamaquoddy children was \$110,000 rather than \$100,000, it would have to replace the entire state share before it could increase the total amount. The \$10,000 increase, then, would cost the federal government \$35,000.

As you will be able to see from the appended memorandum, attempts to circumvent this provision have centered on narrowly construing the term "substantially similar" so that, for practical purposes, no federal program could be determined to be substantially similar to a State program and the section would not be triggered. In this regard, I believe the State has gone a long way.

This impasse now centers on whether the federal programs cited be described as "intended" to be supplemental or "required" to be supplemental. The Interior Department advocates the former position and the State the latter.

Other programs are also implicated by this provision. They include General Assistance, workmen's compensation (under section 6211(4)) and so on.

*Following the mark-up, we met in George Mitchell's office with Interior, representatives of the State, and Pete Taylor, special counsel on the Indian Committee. At that point, it became obvious that much of the disagreement between the State and Interior was based on the ignorance of each party of the other's funding mechanisms. Accordingly, Pete and I met with a representative from the Interior Department the following day and discussed several Indian assistance programs and the conditions which each placed on State participation.

As a result of that meeting, we drafted several questions for the Attorney General's office to determine how the State programs would interact with the federal programs we had discussed. I think that, before we can at all sure of the interaction of these programs, we will have to run several models on them using various figures. I would expect that we will have these figures quite soon.

28, 1980

You should be aware that I will not be back in the office on Wednesday as my plane does not come in until that night. If you feel it is appropriate for the kind of meeting you are to have with Secretary Andrus, however, I would suggest that you ask Peter Taylor if he is interested in attending. He has been very helpful on the Maine Legislation, is fair-minded, and can tug Interior back into line if it misrepresents the operation of one its programs. He would be more than happy to do this.

If you would like to talk to me about this, I will be at either of the following numbers:

942-3350 (Bangor) or 422-3176 (Hancock Point)

I brought all my file information on this problem with me so I should be able to answer your questions without any problem.

Enjoy your birthday and the Valley.