

Native American Rights Fund

178 Middle St. • Portland, Maine 04101 • (207) 773-7166

Executive Director
John E. Echubawk

Main Office
1506 Broadway
Boulder, Colorado 80302
(303) 447-8760

Washington Office
1712 N. Street, N.W.
Washington, D.C. 20036
(202) 785-4166

September 6, 1980

Honorable John Melcher
United States Senate
Washington, D. C.

Dear Senator Melcher,

Secretary Andrus has asked me to write to you to explain the Passamaquoddy Tribe's and the Penobscot Nation's understanding of Sec. 6(g) of S.2829 and Sec. 6211 of the Maine Implementing Act. Section 6211 deals with the eligibility of the Maine Tribes for State funding. Sec. 6(g) provides in relevant part that the Maine Tribes "shall be eligible to receive all of the financial benefits which the United States provides to Indians, Indian nations or tribes or bands of Indians to the same extent and subject to the same eligibility criteria generally applicable to other Indians, Indian nations or tribes or bands of Indians." My clients' understanding of these provisions is best explained by outlining the manner in which they developed.

Negotiations concerning settlement of the Maine Indian land claims began in the spring of 1977 when President Carter appointed Justice William B. Gunter to evaluate the claims and recommend a course of action for the Administration. Justice Gunter studied the legal aspects of the case and discussed with the parties their views concerning settlement. The Tribes raised federal Indian services as an issue of major importance to them. The State of Maine was expected to discontinue the services which it was providing to the Tribes, and the United States had never provided the Maine tribes the level of services which it provides other Indian tribes. The Tribes were determined to make certain that any settlement contain a provision ensuring that full federal Indian services be provided to them and that they not have to use income obtained from settlement funds and property to pay for services which the Federal Government provides other tribes. At one point during these discussions the Department of the Interior suggested to Justice Gunter that the services issue be dealt with by providing the Maine Tribes with a lump sum payment in lieu of such services, but this suggestion was rejected. Justice Gunter's July 7, 1977 recommendation, a copy of which is enclosed, met the Tribe's objectives in this regard. The Justice recommended creation of a trust fund for the Tribes, acquisition of trust lands for the Tribes, and the provision of federal Indian services. Paragraph C(3) of the recommendation says that the United States should "[a]ssure the two tribes that

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that normal Bureau of Indian Affairs benefits will be accorded to them by the United States in the future."

Justice Gunter's recommendation led to detailed negotiations with a White House Work Group composed of Eliot R. Cutler, Associate Director of the Office of Management and Budget, Leo M. Krulitz, Solicitor of the Department of the Interior, and A. Stephens Clay, Justice Gunter's law partner. The Tribes took the same position in these negotiations concerning the services issue as they did in their discussions with Justice Gunter. These negotiations produced an agreement between the Tribes and the President on February 10, 1978. That agreement, which was embodied in a document titled Joint Memorandum of Understanding, a copy of which is enclosed, approached federal Indian services in a manner similar to that recommended by Justice Gunter. In Section 7(c) the federal government pledges

that the tribes will be considered fully federally recognized tribes and will receive all federal services, benefits and entitlements on the same basis as other federally recognized tribes.

The agreement between the Tribes and the White House led to still further negotiations in which the Tribes were asked by the Maine Congressional Delegation to reach an agreement with the State of Maine concerning jurisdictional matters. An agreement with the State was ultimately reached which provided that in addition to their status as federally-recognized tribes, the Passamaquoddy Tribe and the Penobscot Nation would also have municipal status for various purposes under Maine law. As part of this agreement, and in return for concessions made by the Tribes, the State committed itself to fully include the Tribes in its municipal funding system. Under the terms of the agreement the Tribes are permitted to use federal funds to supply any local share which is required for funding by the State.

At the time the Tribes were negotiating with the Federal Government there was no discussion concerning services to be provided by the State of Maine. It was assumed by those participating in the negotiations that Maine would discontinue the Maine Department of Indian Affairs and cease its prior funding of the Tribes through that agency. It was also assumed that Maine would provide services to Maine Indians as citizens of the State. There was no discussion, however, as to how this was to be done, even though the funding of members of federally-recognized tribes by states was then a matter of dispute between the Federal Government and various states. As a result, the agreement to

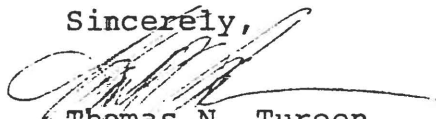
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guarantee full Federal Indian funding was not conditioned on provision of a particular level of funding by the State.

My clients are pleased that the agreement which they negotiated with the State of Maine may reduce to some extent the cost to the Federal Government of providing full services to them. They understand Sec. 6211 of the Maine Implementing Act to prohibit duplicate funding by the State and the Federal Government. They also understand that the supplanting provision of Sec. 6211 does not apply to federal programs which by statute or regulation are deemed supplemental. They understand Sec. 6(g) of S.2829 to be a guarantee, consistent with that bargained for in the Joint Memorandum of Understanding, that the Federal Government will provide them with full federal funding regardless of the level of funding provided by the State of Maine. They also understand that the Administration has a desire to obtain maximum participation by the State of Maine in meeting the Federal Government's obligation to the Maine Tribes, and fears that Sec. 6211 might hinder this goal. Specifically, they understand that the Administration is concerned that because the Federal Government funds various programs for Indians at levels higher than those provided by most states, that in order to meet its obligation to fund Maine tribes at the same level as other tribes it might be obliged under Sec. 6211 to supplant Maine's contribution to particular programs. After studying various Maine programs, however, it appears that the Federal Government will be able to meet its obligation of providing full federal funding to the Maine Tribes without supplanting Maine funds. This will require careful attention to existing federal statutes and regulations, and may require adoption of new regulations. The Tribes are prepared to cooperate with the appropriate officials on these issues, and will assist in the preparation of remedial legislation if it develops that the Federal Government is bearing a disproportionate share of the cost of providing full federal Indian services to them.

Many thanks for your assistance in this matter.

Sincerely,



Thomas N. Tureen

encls.

cc: Hon. William Cohen
Hon. George Mitchell
Hon. Cecil Andrus
Hon. Richard Cohen
Andrew Akins