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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 2, 1980

Peter Taylor
Tim Woodcock
Select Committee on Indian Affairs
6313 Dirksen Senate Office Building
Washington, D.C.

Re: S. 2829.

Dear Peter and Tim:

Jon Hull and I reviewed the redraft that you provided to us and which was proposed for the mark-up last Tuesday. In rereading that draft we noted several technical problems that we wanted to bring to your attention.

1. Although you deleted the definition of "Indian Country" in § 3(2), the term is still used in the body of the Act itself. However, it is now undefined. We would suggest that either "Indian Territory" in § 3(2) be redefined to simply incorporate the definitions of "Passamaquoddy Indian Territory" and "Penobscot Indian Territory" or that "Indian Territory" when used elsewhere in the Act be corrected to read "Passamaquoddy Indian Territory" and/or "Penobscot Indian Territory." See for example § 5(d)(3) line 7 and 5 (h)(2) line 8.

2. The redraft of § 5(d)(3) contains a new proviso regarding the reversionary interest of the Passamaquoddy Tribe and Penobscot Nation in Houlton Band trust lands. Under the new language the Houlton Bands' lands revert to the other Tribes if the Houlton Band "should terminate their (sic) interest in the property." Query, what does terminate mean? Sale? Trade? Eminent domain? As we recall, this proviso originally spoke in terms of the Houlton Band losing Tribal status. This new language seems ambiguous, and we suggest using the language from the original bill.

3. Section 5(h)(1) line 6 uses the phrase, "laws of the state of Maine." For consistency we think this should be "Maine Implementing Act."

4. Section 5(h)(2) of the redraft includes the Houlton Band trust land in a confusing fashion. Without restating our fundamental policy objection to the Bands' inclusion at all, the approach of the subsection is confusing. First, contrary to the language in the first sentence, the Maine Implementing Act does not have separate provisions for condemnation of Houlton Band land as it does for the Penobscot and Passamaquoddies. Although, under § 6204 of that Act, the Houlton Band land can be condemned under normal state law, it is not subject to the same procedural protection as are Penobscot and Passamaquoddy lands. Thus, the first sentence is confusing.

The second and following sentences in § 5(h)(2) are equally inapplicable to the Houlton Band. Those sentences were presumably intended by Interior to mesh this Act with the Maine Implementing Act. (This section was not in the original bill but was added in Interior's redraft without prior review by us.) However, the concept Interior used was only applicable in the Implementing Act to the Passamaquoddy Tribe and Penobscot Nation. As a result § 5(h)(2) is something of a drafting hodge-podge. I think it demonstrates the difficulty of inserting the Houlton Band into a concept that was designed for an arrangement applicable only to the other Tribes. Frankly, we think the easiest drafting solution is to delete the Maliseets entirely from § 5(h)(2) and to provide in a separate provision that trust land of the Houlton Band may be condemned "under the laws of the State of Maine" without more.

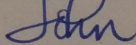
5. I had understood that the proviso in § 6(a) was thought to be unnecessary and confusing since it simply restates limitations imposed either in the other provisions of this Act or the Maine Implementing Act.

6. The last proviso in § 6(h) refers to lands "owned by" the respective Tribe or Band. We think the quoted phrase is erroneous since special federal tax status is only extended to Tribal trust lands.

If we note any more technical problems, we will let you know.

Regards.

Sincerely,



JOHN M. R. PATERSON
Deputy Attorney General

JMRP/ec

cc: Thomas Tureen
Donald Perkins
Reid Chambers