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December 23, 2008

Paul Bisulca, Chairman
Maine Indian Tribal - State Commission
P.O. Box 186
Hudson, ME 04449

Dear Chairman Bisulca:

This will respond to your written request dated December 3, 2008 seeking an opinion of this Office as to whether the Houlton Band of Maliseet Indians is authorized to conduct high-stakes bingo/beano games pursuant to 17 M.R.S.A. § 314-A. For the reasons discussed below, it is the opinion of this Office that, although the Houlton Band of Maliseet Indians is eligible to receive a license to conduct high-stakes bingo/beano games as a federally recognized tribe under 17 M.R.S.A. § 314-A(1), subsection (5)(C) of that statute prohibits the Band from conducting such games on Houlton Band Trust Lands or elsewhere, since the Band does not have "Indian Territory" on which to conduct such games.

Title 17 M.R.S.A. § 314-A(1) authorizes "[t]he Chief of the Maine State Police to issue licenses to operate high-stakes beano or high-stakes bingo to a federally recognized Indian tribe." In view of the fact that the Houlton Band of Maliseet Indians is a federally recognized Indian tribe, 25 U.S.C. § 1726(i), the Band is eligible to receive a license to operate games of high-stakes beano/bingo pursuant to section 314-A(1).

There are, however, several restrictions imposed upon a licensee by virtue of 17 M.R.S.A. § 314-A(5), which provides in its entirety as follows:

> A licensee may not:
>
> A. Transfer or assign a license issued under this section;
> B. Operate or conduct a beano game or high-stakes beano game on the same premises on the same date as another licensee; or
> C. Conduct a game outside the Indian Territory of the licensed organization.

> A licensee who violates this subsection commits a civil violation for which a fine of not more than $1,000.00 may be adjudged. (emphasis added).

Your inquiry requires us to consider the meaning of the term "Indian Territory" as used in section 314-A(5)(C). In other words, the issue is whether the Legislature intended "Indian Territory" to mean the Penobscot Nation and Passamaquoddy Tribe "Indian Territory" as defined in the Maine Implementing Act, 30 M.R.S.A. § 6205(1) and (2), or, alternatively intended "Indian Territory" to have a more generalized meaning that refers to any land owned or held in some fashion by a federally recognized Indian tribe.

It is our opinion that if this question were to be presented to a court in Maine, it would conclude that the term "Indian Territory" as used in 17 M.R.S.A. § 314-A(5)(C), was intended to refer to the "Indian Territory" described in the Maine Implementing Act and, thus, was not intended to include Houlton Band Trust Land as defined in 30 M.R.S.A. §§ 6203(2-A) and 6205-A, or other land that may be owned, possessed or held on behalf of the Houlton Band of Maliseet Indians. Our opinion is based upon the legislative history of the enactment of 17 M.R.S.A. § 314-A and the clear evidence that the Legislature meant the term "Indian Territory" to refer to Penobscot Indian Territory and Passamaquoddy Indian Territory as those terms are used in the Maine Implementing Act. *See* 30 M.R.S.A. § 6205(1) and (2).

In *Penobscot Nation v. Stilphen*, 461 A.2d 478 (Me.), *appeal dismissed*, 464 U.S. 923 (1983), the Supreme Judicial Court of Maine ruled that the general state law prohibiting high-stakes bingo/beano was applicable to the Penobscot Nation. The Court further concluded that the Nation's unlicensed operation of high-stakes bingo/beano games was not an "internal tribal matter" exempt from state regulation within the meaning of 30 M.R.S.A. § 6206(1).

In 1987, the 113th Legislature enacted L.D. 1642 entitled "An Act Concerning 'Beano' or 'Bingo' on Indian Reservations." The bill was signed by the Governor as Chapter 197 of the Public Laws of 1987 and created 17 M.R.S.A. § 314-A to deal expressly with high-stakes beano/bingo by federally recognized Indian Tribes. As originally enacted, the restrictions contained in 17 M.R.S.A. § 314-A(5) included the requirement that "[a]ll games shall be conducted on the reservation of the licensed organization." (emphasis added).

The fact that high-stakes beano/bingo could only be conducted on the "reservation" of the licensed federally recognized Indian tribe was significant, because only the Penobscot Nation and Passamaquoddy Tribe have Indian reservations as defined and described in detail in the Maine Implementing Act. *See* 30 M.R.S.A. § 6203(5) and

(8). The reservations are only a part of the respective Indian Territories of the Penobscot Nation and the Passamaquoddy Tribe as defined by 30 M.R.S.A. § 6205(1) and (2). Moreover, the reservations themselves have a unique legal status, in that the Penobscot Nation and Passamaquoddy Tribal Courts have exclusive jurisdiction within their respective Indian reservations over certain specified matters. *See* 30 M.R.S.A. § 6209-A and § 6209-B (jurisdiction of the Passamaquoddy Tribe and the Penobscot Nation Tribal Courts). In addition, law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation have exclusive authority to enforce certain matters on their respective Indian reservations. 30 M.R.S.A. § 6210.

As a result, when the 113th Legislature enacted 17 M.R.S.A. § 314-A(5) in 1987, it was clear that the high-stakes beano/bingo law only had application to the Penobscot Nation and the Passamaquoddy Tribe, since those were and are the only two federally recognized Indian tribes in the State of Maine that could conduct high-stakes games on their "reservations" as required by section 314-A. The Houlton Band of Maliseet Indians, although clearly a federally recognized Indian tribe, could not meet the requirements imposed by subsection 5 of 17 M.R.S.A. § 314-A, since the land held on behalf of the Band is not a "reservation" as defined in the Maine Implementing Act.

In 1991, the Legislature amended 17 M.R.S.A. § 314-A(5) to delete the requirement that all high-stakes beano/bingo games be conducted "on the reservation of the licensed organization," and provided instead that "[a]ll games must be conducted within the Indian Territory of the licensed organization." *See* P.L. 1991, c. 426. (emphasis added). This change originated in Committee Amendment "A," No. H-529, to L.D. 1522 in the First Regular Session of the 115th Legislature. The Statement of Fact accompanying Committee Amendment "A" described the change as follows:

> The amendment also expands the permissible location of beano games by permitting the operation on Indian Territory rather than on the Indian reservation. Indian Territory includes only locations within unorganized territories specifically designated in law. (emphasis added).

As is the case with Indian reservations, so it is with Indian Territory, i.e., only the Penobscot Nation and the Passamaquoddy Tribe have Indian Territory within the meaning of the Maine Implementing Act. The fact that the Legislature used the term "Indian Territory" is significant because Indian Territory has a specific legal meaning and description, and has unique legal status under the terms of the Maine Implementing Act. *See* 30 M.R.S.A. § 6206 (powers and duties of Indian Tribes within their respective Indian Territories). The land owned or held by or on behalf of the Houlton Band of

Maliseet Indians does not constitute Indian Territory within the meaning of the Maine Implementing Act. As the Statement of Fact to Committee Amendment "A" to L.D. 1522 makes clear, the Legislature in 1991 understood that the term "Indian Territory" referred to specifically designated locations defined in the law. The only "Indian Territory" within the unorganized territories specifically designated in the law is the Penobscot and Passamaquoddy Indian Territories described in the Maine Implementing Act. *See* 30 M.R.S.A. § 6205(1) (Passamaquoddy Indian Territory) and (2) (Penobscot Indian Territory). The logical conclusion is that when the Legislature used the term "Indian Territory," it meant the Passamaquoddy and Penobscot Indian Territories.[1]

In 2003, 17 M.R.S.A. § 314-A(5) was repealed and replaced to read as it presently does. *See* P.L. 2003, c. 452, § I-6. The Amendment reorganized subsection 5 but made no substantive change in the restrictions contained therein, except to make a violation of the restrictions a civil violation for which a fine of not more than $1,000.00 may be adjudged.

In our view, the history of 17 M.R.S.A. § 314-A(5)(C), which prohibits conducting a game of high-stakes beano/bingo "outside the Indian Territory of the licensed organization," is clear. The purpose of that restriction was to require that a licensed federally recognized Indian tribe could only conduct high-stakes beano/bingo games within the tribes' "Indian Territory." Indian Territory is specifically defined in the law and only the Penobscot Nation and Passamaquoddy Tribe have Indian Territory.

We believe that if a court were to consider the question as to whether the Houlton Band of Maliseet Indians could conduct high-stakes beano/bingo games, it would conclude that, while the Band is a federally recognized Indian tribe eligible to receive a license from the Chief of the Maine State Police in accordance with 17 M.R.S.A. § 314-A(1), the Band may not conduct such high-stakes beano/bingo games at the present time because, as a licensed organization, it does not have Indian Territory within which to conduct such games.

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[1] That the Legislature in 1991 understood that the term "Indian Territory" applied only to the Penobscot Nation and the Passamaquoddy Tribe is illustrated by comments in both the House and Senate with respect to L.D. 1522. The original Statement of Fact in L.D. 1522 only referred to the Penobscot Nation. On the floor of the House, Representative Lawrence of Kittery rose to the floor to "clarify an error in the Statement of Fact, this bill applies to both the Penobscot and Passamaquoddy Nations [sic] even though the Statement of Fact only makes reference to the Penobscot Nation." Legislative Record (House) at H-1062 (June 10, 1991). A similar statement was made by Senator Mills of Oxford in the Senate on the same day. *See* Legislative Record (Senate) at S-1145 (June 10, 1991).

I hope this information is helpful to you. Please feel free to contact me if I can be of further assistance to you.

Sincerely,

G. Steven Rowe
Attorney General