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2008-04

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September 25, 2008

Chief Brenda Commander  
Houlton Band of Maliseet Indians  
88 Bell Road  
Littleton, ME 04730

Re: *2002 Intergovernmental Agreement*

Dear Chief Commander:

By letter dated August 27, 2008, you requested an opinion as to whether, given 30 M.R.S.A. § 6206-A, the 2002 Intergovernmental Agreement between the Houlton Band of Maliseet Indians (the "Band") and the State of Maine would authorize the Maliseet tribal court to exercise jurisdiction over Maliseet child welfare cases. It is my opinion that the Intergovernmental Agreement does not authorize the Maliseet tribal court to exercise jurisdiction over Maliseet child welfare cases. Rather, the Maliseet tribal court could exercise jurisdiction over such cases only pursuant to an amendment to the Act to Implement the Maine Indian Claims Settlement (the "Implementing Act"), 30 M.R.S.A. §§ 6201-6214.

The 2002 Intergovernmental Agreement essentially authorizes the transfer of child welfare cases involving a Maliseet child to either the Penobscot tribal court or the Passamaquoddy tribal court.<sup>1</sup> While the Agreement contemplates that the Band may, in the future, establish its own tribal court, it does not vest in such court jurisdiction to hear child welfare cases.

Moreover, in my view, any contrary interpretation of the Intergovernmental Agreement would conflict with Sections 6204 and 6206-A of the Implementing Act. Those sections state:

Except as otherwise provided in this Act, all Indians, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein.

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<sup>1</sup> The Intergovernmental Agreement also requires the State to provide certain information and notices to the Band regarding child welfare cases and to offer the Band the opportunity to intervene in such cases. That portion of the Agreement, however, is not directly relevant to your inquiry.

30 M.R.S.A. § 6204.

The Houlton Band of Maliseet Indians shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.

30 M.R.S.A. § 6206-A.

Therefore, the exercise of jurisdiction over child welfare cases by the Maliseet tribal court would require an amendment to the Implementing Act.

I hope you find this opinion responsive to your question. Please know that this office looks forward to continuing to work cooperatively with the Band on child welfare matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steven Rowe", with a long horizontal flourish extending to the right.

STEVEN ROWE  
Attorney General

SR/s