MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1941--1942

In view of the fact that the Legislature of Maine has put on the Liquor Commission the burden of producing an amount that is 61% in excess of the cost to the State of the liquor f. o. b., Augusta, are we justified in refusing to pay the distiller a price which would include increased freight rates and increased other costs to him when the result will be that we shall either have to increase our liquor prices correspondingly or act in violation of the plainly expressed law laid down by our Legislature?

You understand, of course, that it is the desire of the State of Maine to cooperate with the Federal government in this matter insofar as we can do so. We insist, however, that our cooperation is voluntary. We insist that the Federal government has not the right to require that the State shall set any particular price on its own goods which it is selling, and in cooperating in this regard we are not in any way waiving any rights that the State may have to refuse to cooperate. Any waiver of rights of the State of Maine in this particular instance is not to be considered as a precedent as a waiver on any other occasion or in any other regard.

Very truly yours,

FRANK I. COWAN
Attorney General

From: May 22, 1942
Frank I. Cowan, Attorney General

To:
Harold I. Goss, Deputy Secretary of State

In re Calvin Lane

I have your request for an opinion based on the following set of facts:

A candidate from the City of Portland files a nomination paper in which it is clearly set forth that the electoral district from which he is seeking election is the City of Portland.

This nomination paper is one of several which he files.

If we count all the names on the nomination papers he will have ample names to justify placing his name on the ballot.

We find, however, the following facts: (1) Several signatures are followed in the column marked "residence" by the word "Gorham" or "Westbrook" or "Cape Elizabeth", etc. None of these names are struck off of the nomination papers. (2) Some of the signatures are followed in the column marked "residence" by such designations as "11 Smith Street".

The questions you ask are: (1) Shall the Secretary of State count as names properly on the nomination paper, persons who gave their places of residence as towns or cities known to be different from the town or city which is the electoral district in which the

candidate is running for office, even though investigation might (might, if such investigation were carried on) disclose that the person who has signed his name to the paper and gave his residence as such other town or city, actually had a voting residence in the city from which the candidate is running?

(2) Shall the Secretary of State count as names properly on the nomination paper, persons who designated their residence simply by a street address, without adding the name of the city or town in which they hold residence?

My answer to your first question is that the law expressly requires that the signer of a primary nomination paper set down his signature and his residence. Residence means "voting residence". There is no burden on the office of the Secretary of State to investigate in cases where the nomination paper is not itself clear. Any such burden rests upon the candidate and it is not my understanding that there is any question on the matter of proof which the candidate must furnish in order to correct this particular phase of the papers.

My answer to the second question is that although the person who has signed the nomination paper has set down a residence which may be his voting residence in the city or town from which the candidate is running for office, nevertheless, in view of the fact that the candidate has on his papers other names indicating residence in towns other than the town or city from which he is running as a candidate, the Secretary of State is not correctly informed as to the actual city or town of residence of the persons who have simply placed their street addresses on the nomination paper. In view of the fact that the candidate himself has left on his papers names of persons indicating that they reside in other municipalities than the one from which he is running for office, he has himself overcome any presumption that might exist that all persons signing the nomination paper reside in the municipality from which he is running for office. There is no burden on the office of the Secretary of State to investigate and learn whether or not the persons who have set down their street addresses are actually residents of any particular municipality. That burden rests with the candidate.

I am informed that the above interpretation is the one that has been accepted by the office of the Secretary of State of this State for many years as the correct one and that many candidates have failed to get their names on the ballot because of failure to conform to this interpretation. It seems to me that in view of the fact that the above interpretation is logical, the fact that it has been the rule under which the office of the Secretary of State has administered the law for many years, is entitled to great weight. Even though another interpretation of the law is possible and might be equally logical, a change in administrative procedure now would create confusion in the minds of the hundreds of election officials throughout the State and it is my feeling that a rule that can be justified in law which has such a long history should be adhered to.

There is a provision of law which appears in Section 6 of Chapter 7 of the Revised Statutes which runs as follows:

> "Such nomination papers so filed, and being in apparent conformity with the provisions hereof, shall be deemed to be valid; and, if not in apparent conformity, they may be seasonably amended under oath."

I have examined a list of names of voters which has been filed in your office as a correction of the nomination petitions. I note that said list is certified by what purports to be two members of the Board of Registration of the City of Portland. However, the list is not under oath, and however informally the amendment may be made, the requirement for an oath is mandatory and cannot be waived.

It is, therefore, my opinion that the document which you have received, which may have been intended to show the place of residence in the City of Portland of certain persons who signed the petitions of Mr. Lane, is not sufficient in law.

You further inform me that although the ballots for the City of Portland have not already been printed, the absentee ballots which must be sent to our absent voters, have been printed and are ready to send to the City Clerk of the City of Portland today. I am compelled to say that, in my opinion, an amendment will not now be "seasonable" so that, regrettable as it may seem, if any name of a prospective candidate has been left off the list due to an error in form of the nomination paper, the error was not caused in your office and the candidate did not avail himself of the statutory means of amending his paper so that it would conform to statutory requirements.

FRANK I. COWAN
Attorney General

May 25, 1942

From:
John S. S. Fessenden, Assistant Attorney General

To:
Guy R. Whitten, Deputy Insurance Commissioner

Reference is made to your memorandum of April 16th, 1942 in which you ask a question with respect to Section 104, Chapter 60, Revised Statutes of 1930.

In reply you are advised that an investment in real estate cannot be considered as a net cash asset within the meaning of the statute, so that in the case of a mutual company, "net cash assets" are those assets as expressed in the net policyholders surplus which consist of negotiable securities and cash. A mutual company must, therefore, have "net cash assets" of at least $100,000.

Assistant Attorney General