

MAINE STATE LEGISLATURE

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March 3, 1944

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To Honorable Sumner Sewall

Executive

From Abraham Breitbard, Deputy

Attorney General

I have read the documents that were submitted to you by the representative of the Trailer Colony, so-called, in the town of Scarborough which deals with applications by the inhabitants of this colony to register as voters for the town meeting to be held March 6th. I have read the charges that they make with regard to the actions of the selectmen of the town at the session which started yesterday to hear applications for registration:

I have talked this morning with Francis W. Sullivan who is counsel for the town of Scarborough, and who was present yesterday sitting in at the session and receiving the applications for registration.

From his narration and what appears in the documents that were submitted to you, it would seem that the town officials are proceeding according to law to ascertain and determine the qualification of these applicants and are following the procedure prescribed by the statutes. The line of inquiry addressed to each applicant, as it appears in the documents that they submitted, seem to be proper and pertinent and are not irrelevant as the representative for these inhabitants charges.

Mr. Sullivan informs me that at yesterday's session the selectmen used all due diligence and speed in hearing each applicant and in each case reserved their determination in order to give the matter proper consideration. He said that by tomorrow, Saturday, at 4 o'clock they will announce the names of the applicants who, in their judgment, have qualified to register as voters. He also informs me that unquestionably some of those that were heard yesterday are entitled to and will be registered as voters.

The action of the selectmen in reserving their determination so as to consider the applications in executive session was proper and cannot be subject to criticism.

Our Court in Sanders vs. Getchell, 76 Maine, 158, in commenting upon the difficulties besetting selectmen who are called upon to determine these questions are forcefully set forth in an opinion by Chief Justice Peters in an action for damages brought by a voter who was refused the right to vote.

I quote from the opinion at Page 163:

"What then, in view of the history of this question, and of the difficulties and embarrassments that beset it, may be considered, generally speaking, an unreasonable act of selectmen in refusing to receive the vote of a person qualified to vote. The officers must act honestly and reasonably. If their action be such as sensible and impartial men generally would approve, they would no doubt be justified. But cases may occur of so close and

doubtful a character, either upon the law or fact, that even reasonable and impartial men would be likely to differ in their judgments upon the question. Occasionally there are contentions that could be decided either way, and the decision not be unreasonable. We think the selectmen would not be liable to an action for their refusal to receive a vote, if the question presented to them be so doubtful that reasonable and competent men, unaffected by bias or prejudice, might naturally differ in their views upon it; if the question be such that there is room for two honest and apparently reasonable conclusions to be reached. There would be no justice, under our statute, in holding selectmen to absolute legal and technical accuracy in all things. The very object of the statute was to change such a rule. The statute implies that mistakes may be made, but excuses them unless unreasonably made. The liability for error is not absolute but conditional. The presumption of correctness is with the officer. The more doubtful the case, the stronger the presumption. Says SHAW, Ch.J., in Blanchard v. Stearns, supra, 'It is a presumption entitled to greater consideration in doubtful cases of domicil, where very competent judges might well think differently in regard to the preponderance of the evidence, and very honestly come to opposite conclusions, upon the same statement of facts.'

I may add that under R. S. Chapter 6, Section 50, provision is made authorizing any citizen of the State, in term time or vacation, to file a complaint stating that his name, or that of some other citizen, is illegally kept from the list of qualified voters and requiring that the presiding justice give notice and hear the applicant. Also under this provision notice is to be given to persons other than the complainants who are named in the petition. It would seem, under this provision, that any citizen might name fifty others who have been refused registration. As a matter of procedure they may waive notice and thus the problem may be presented to the Court in wholesale fashion rather than what would be cumbersome if each one had to apply for himself. In that way they can get a speedy determination and for a larger number.

I may further add the fact which I overlooked stating previously that Mr. Sullivan informed me that the selectmen are going to sit all day today and tomorrow up to 4 o'clock to receive the applicants.

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In my judgment, so long as the persons upon whom the statute has put the responsibility of registering voters act in accordance with law and perform their duties as the statute prescribed, there is very little that the Executive or the Attorney General's department can do.

On the other hand, if the selectmen act arbitrarily, recourse may be had for these wrongs. But until such evidence appears the presumption must prevail that they are acting honestly and in accordance with their oath of office.

Respectfully yours,

Abraham Breitbard
Deputy Attorney General

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