

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

March 15, 1944

Governor Sewall

Executive

Soldiers' Voting

As you are aware, Mr. Goss and I had considerable discussion as to whether or not the Civilian Defense Act (P. L. 1941, c. 305) is sufficiently broad to authorize the Governor to issue an Executive Order modifying the existing statutes to permit of registration of voters in cities having more than 3,000 population in the same way that they are registered in towns. The Act is extremely broad, and if modifying the registration laws is something indissolubly linked to the "welfare" of the people of the State of Maine, and if it will assist in "coöperation with the Federal government," then it is within the provisions of that statute.

The fact that the Legislature intended to give to the Governor authority to take care of emergencies that may arise so that a special session would not be necessary, does not necessarily mean that the Executive should so act in all cases. I have given this matter a great deal of thought and have reached the conclusion that the Legislature cannot delegate to the Executive authority to make any changes in the election machinery. The fact that Chapter 305 is purely a War measure cannot alter that opinion. The constitution has placed on the Legislature the exclusive duty of setting up a system of elections. The constitution provides further that no one of the three branches of government shall exercise any of the functions exclusively delegated to the other branches. Election statutes, in my opinion, fall into that exclusive class and only by act of the Legislature can they be changed.

FRANK I. COWAN
Attorney-General

March 27, 1944

Governor Sumner Sewall

Subject: Federal Ballot for Soldier Voting

I. The Federal Constitution, Article II, §1, Paragraph 2, provides for the election of the President and Vice President in the following language: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors." This language is clear and hardly requires interpretation. The legislature of the State of Maine can by a majority vote, provide the qualifications for persons who shall vote in the November election for the electors for President and Vice President of the United States. Moreover, since Congress has set the form of a ballot and has authorized the states to use this ballot for presidential electors, if they see fit, the legislature can by simple majority vote accept that ballot and authorize the election officials of the several precincts of the State to count them along with any other ballots that may be lawfully cast at said election.

II. The Constitution of the United States, Article I, §2, Paragraph 1, provides that in the election of representatives to Congress "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." The same

language appears in Article XVII of the Constitution of the United States in regard to the direct election of United States senators.

The Constitution of the State of Maine requires that the electors for the most numerous branch of the State legislature shall be (a) a citizen, (b) 21 years of age and upwards, (c) shall be able to read the constitution in English language and write his name, (d) shall not be a pauper, (e) shall not be under guardianship, (f) shall not be an Indian not taxed. Therefore, we cannot accept the proposition that the Congress, without an amendment to the Constitution of the United States, may set the requirements of electors for United States senators and members of Congress, and the legislature of the State of Maine cannot set aside the Constitution of the State by fixing any requirements other than those expressly set out in our fundamental law.

III. Any amendment to our election laws passed by the Legislature, must follow our State Constitution except as to the presidential election where by direct provision of the Federal Constitution full authority is placed in the State Legislature.

FRANK I. COWAN

Attorney-General

March 27, 1944

Harry V. Gilson, Commissioner of Education

We have considered the questions proposed in your memorandum of February 25, 1944, with relation to the enumeration in the school census of children having a right to attend the public schools.

1. Shall the Superintendent of Schools continue to enumerate minors in the armed services in the towns where their parents reside?

Answer. We think that he should. Under §32 of Chapter 19, it is provided that every child between the ages of 5 and 21 years shall have the right to attend the public schools of the town in which his parent or guardian has a legal residence. Under §§56 and 57, which concern the returns for the purposes of the census to the superintending school committee and the Commissioner of Education by the superintendent of schools, it is provided that the certified list "is to contain the names and ages of all persons in the town from 5 to 21 years," and the only ones who are to be omitted are ". . . all persons coming from other places to attend any college or academy, or to labor in any factory or in any manufacturing or other business."

2. A girl under 21 years of age marries a soldier whose residence is outside the town where the girl's home has been and where the soldier is now stationed. Is she to be counted in the school census in the town where she has always lived or should she be registered in the town of her husband's residence?

Answer. A female minor acquires the domicile of her husband. Thus she is to be counted in the school census in the town of her husband's domicile. We may add that "legal residence," as used in §32, is synonymous with "domicile." Domicile is that place where a person has his fixed habitation, without any present intention of removing therefrom. Two things must concur to constitute a domicile:—first,