

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1943--1944

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,

residence; second, the intention of making the place of residence the home of the person. There must be the fact and the intention.

3. Defense workers are temporarily domiciled in the towns where they work, but maintain a permanent voting residence elsewhere. Should the children of these defense workers be enumerated in the town of their temporary residence or in the town where they maintain their voting residence?

Answer. The children of workers temporarily residing in towns are to be enumerated for the purpose of the census in the towns where their parents maintain their legal residence, which is the equivalent of the place where the parent maintains a permanent voting residence, as it is put in the question.

4. Should the children of military personnel be enumerated in the town where their parents are stationed, when these military personnel have permanent residence elsewhere?

Answer. The answer is in the negative for the reasons above assigned.

ABRAHAM BREITBARD
Deputy Attorney-General

March 29, 1944

Joseph H. McGillicuddy, Treasurer of State

Handling of checks

I have your memo of March 22nd in regard to the handling of checks. P. L. 1931, Chapter 216 (the administration of the State) in Section 15 provides for departmental collections. I refer you to the wording of that section. It provides substantially as follows:

1. Departments receiving funds "shall pay the same immediately into the State treasury."
2. The department or agency may, having been so instructed by the State Treasurer, deposit the funds directly in some State depository.

The fact that this section of the statute is apparently fundamentally unsound and is, as we know now, the result of a study made by persons who were not at the time sufficiently acquainted with governmental matters to make them proper advisors for a State, is beside the point. The legislature accepted the language and put it on the books.

A strict interpretation of the provisions of that section by this department would, I believe, be against the best interests of the State. I believe that the proper procedure is for us to regard this as an administrative question, and that a uniform procedure should be adopted by the department heads, such procedure to be submitted to this office for approval.

As I have told you heretofore, my personal feeling is that once a check has reached your office, whether it comes there through some other department or directly from a debtor, it is in your custody and you are responsible for it. In either case, the better procedure, it seems to me, is for you to notify the department head that you have received payment either from him or from the debtor, so that his records will be complete.