

# MAINE STATE LEGISLATURE

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STATE OF MAINE

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REPORT

OF THE

ATTORNEY GENERAL

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for the calendar years

1943--1944

lent conduct in connection with the affixing of the stickers in the Town of Sanford. I am informed that there were only a few of these stickers affixed in that town and, if there were evidence of fraud, we would be justified in regarding them as distinguishing marks on the ballots sufficiently patent to justify throwing out all ballots so marked. However, since the same procedure was followed in Sanford as in Biddeford and we have nothing to suggest that there was an intent to place a distinguishing mark on the ballots, the Sanford ballots should be treated in the same way as the Biddeford ballots. Disregard the sticker votes for county treasurer; but count the votes on which the stickers appears (unless there is some other reason for throwing out the entire ballot) for those offices mentioned in the warrant for the State election as set forth above.

FRANK I. COWAN  
Attorney-General

November 2, 1944

H. C. Crawford, Municipal Auditor

Audit

*Imposition of probation for payment of fines and costs*

With reference to your memorandum of Nov. 2nd on the above subject, the answers which follow herewith are applicable to the hypothetical cases 1 and 2 since the breach, or violation, of the probation in either case must occur within the period of time fixed for the payment of the fine and costs.

- (1) Where the breach occurs within the probation period, the offender may be brought before the Court for the revocation of the probation and the imposition of the original sentence even though the period of probation has expired. The important event is the violation within the probation period.
- (2) Where a sentence is imposed of a fine and costs, and the respondent is put on probation and time is fixed for the payment of the fine and costs, the condition is imposed on the respondent and it is he who must fulfill the terms of the probation. The probation officer does not act as a collecting agent for the county or the state. Thus, he has no obligation so far as the collection of the fine and costs is concerned except to receive it if it is paid to him, and to turn it into the treasury of the county in accordance with R. S. c. 147, §13, amended 1943, c. 269. When a person is sentenced to pay a fine and costs and he is committed in default of the payment thereof, §48 of said chapter provides that if he is unable to pay the same, he may be liberated by the sheriff after 30 days by giving his note for the amount due to the treasurer of the same county. Thus, the duty of a probation officer would be, on failure by the offender to pay the fine and costs, to bring him before the Court so that he may be committed and held in accordance with said section. Under this section, payment of the fine and costs at any time by the offender would entitle him to liberation.
- (3) In view of what I have stated in the preceding paragraph, I can see no reason why the probation officer would not be justified in accepting the payment of the fine and costs, after the time fixed

by the Court, since the offender would be entitled to his immediate release if he was committed and such payment was made by him at the jail, although I think that it would be good policy for the probation officer to inform the Court that the offender is tendering the payment of the fine after the time fixed by the presiding judge and obtain its approval for the action.

ABRAHAM BREITBARD

Deputy Attorney-General

November 13, 1944

Daniel T. Malloy, Chief Warden    Dept. Inland Fisheries and Game

*Subject: Bona fide resident of a city or town*

I submit herewith answers to the questions you have proposed with relation to the above subject. In order to make the same clear, I am, in this memorandum, quoting your question in each case and then following it with my answer.

1. Mr. A who has been a legal resident of Portland for several years moves to Augusta on September 28, 1944. On October 2, 1944, he applies to the Augusta City Clerk for a resident hunting license.

- (a) Is he a bona fide resident of Augusta on October 2nd, upon satisfying the city clerk that the questions following are answered in the affirmative?
- (b) To identify himself to the City Clerk as bona fide resident of Augusta, must Mr. A make one or more of the following declarations:
  - 1. That he has permanent employment in Augusta and intends to reside there indefinitely.
  - 2. That he has rented or bought a home in Augusta.
  - 3. That he has moved his family to Augusta.

*Answer.* The applicant would be entitled to a hunting license at Augusta, if the city clerk was satisfied that he was "bona fide" (in good faith) a resident of Augusta at the time of such application. The fact that he had resided there less than three months is immaterial, providing he was a "bona fide" resident of *the State* for "3 months next prior to his application for a license."

The inquiries under (b) would be pertinent in determining the question of bona fide residence. See §§40 and 41 of Chapter 38, P. L. 1943.

2. Mr. B moved from Boston, Mass., to Bangor, Maine, on January 15, 1944. On April 20, 1944, he applies to the Bangor City Clerk for a resident fishing license; he is refused same because he cannot show a poll tax receipt for the preceding year and holds no State of Maine motor vehicle operator's license for the current year. (Ref. to par. 9 of sec. 19)

- (a) As this man was not required by law to pay a poll tax in this State for the preceding year, does this poll tax provision apply in Mr. B's case? Must he show a Massachusetts Poll Tax Receipt for 1943?

*Answer.* This applicant would be entitled to a license without pro-