

MAINE STATE LEGISLATURE

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November 5, 1951

To Honorable Frederick G. Payne, Governor of Maine
Re: Resident and Non-resident Licenses, Inland Fisheries and Game

The residential requirements with respect to resident and non-resident licenses are found in paragraph V of Section 58 of the Inland Fish and Game Laws at page 29 at the Back of Laws of Maine, 1949. The provisions is as follows:

"V. Any citizen of the United States shall be eligible for any resident license required under the provisions of this chapter, providing such person is domiciled in Maine with the intention to reside here, and who has resided in this state during the 3 months next prior to the date an application is filed for any license under the provisions of this chapter."

As a matter of law the determination of who is or who is not a legal resident of a particular State or community is always a difficult matter, but principally the determination is made on the basis of the individual's intention. The intent is always to be determined by outward manifestations and not by attempting to read a man's mind or by listening to self-serving statements of his intent, as it may be expressed by him. Since the intent is to be discovered by outward manifestations such as the location of his household furnishings, his maintenance of a place of residence, his usual or customary mailing address, etc., etc. The actual determination in each particular case is made as a result of the findings of fact as to the individual's actual circumstances of life.

It would be an absolute impossibility for the Attorney General's office to resolve the question of any individual's residence with any degree of fairness or finality. As unsatisfactory as the answer may be, the actual answer is, in my judgment, that any individual is entitled to purchase that license which he believes is the proper license to engage in the activity for which he is being licensed. That this answer is unsatisfactory is obvious, since when a person, either innocently or intentionally, purchases the wrong license and is subsequently apprehended by a game warden, he always defends upon the ground that the person issuing the license should have sold him the right license. However, in my judgment, it is extremely unsatisfactory for the licensing agents to attempt to determine the place of legal residence, since most licensing agents are by no means qualified to make such a determination.

I fully agree with Mr. Breitbard's opinion on page 64 of the 1947 Report of this department, that it is perfectly true with respect to certain military personnel that they "may abandon their former domicile and establish a domicile here, by intending to make this their permanent domicile and with the intent to return here,

irrespective of where they may be transferred. As to this phase, each case would have to be examined and decided on its own facts."

I have no doubt that the Fish and Game Department believes that a particular-case decision was an administrative impossibility and consequently were adamant in the position that no person in the military service assigned to Maine from another jurisdiction could acquire a residence in this State so as to entitle him to a resident hunting or fishing license. With this position I cannot agree, except as to the administrative difficulties, since it is obvious that a person in the military service could acquire a residence in the State of Maine when all the facts so indicated. This actual situation has now been changed by legislation. However, the illustration is still good for other branches of government service or employ.

I have no actual constructive solution to the problem, and while I do not agree with many decisions that have been made, I must confess that the handling of the matter from a legalistic approach such as I have expressed above might very well result in administrative turmoil and unsatisfactory public relations. Up to the present time, my candid opinion is that we are operating on the basis of the lesser of two evils.

John S. S. Fessenden
Deputy Attorney General

jssf/c