

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

ceases between the United States and every foreign government. It shall not be printed in the new revision of the statutes.”

You state that you need to know upon what date the state of war ceases between the United States and every foreign government, and, more particularly, that it is necessary for you to know whether Chapter 92 will be in effect on June 16, September 8 and November 4, the dates of the 1952 primary, state and presidential elections.

The cessation of hostilities does not necessarily end the war power or state of war. The state of war may be terminated by treaty, legislation, or presidential proclamation. Whatever the mode, its termination is a political act. It is our understanding that a state of war has ceased to exist with respect to Germany. However, there has been no ratification of a peace treaty with Japan, nor has there been a termination by legislation or presidential proclamation of the state of war with Japan.

We also have armies abroad exercising our war power and have made no peace terms with our Allies in that endeavor, not to mention our enemies.

In view of the fact that courts believe that a state of war is terminated only by a particular means and that with respect to Japan no such method has been invoked, and, further, because of the “police” activities in Korea, it is our opinion that a state of war exists and that, as a result, Chapter 92, P&SL 1944, is still in effect.

It seems very unlikely, moreover, that a political decision to the effect that a state of war between the United States and every foreign nation is at an end will come within the time necessary to end the privileges authorized under Chapter 92 before the end of the year 1952.

JAMES G. FROST
Assistant Attorney General

January 3, 1952

To Col. Francis J. McCabe, Chief, Maine State Police
Re: Public Utilities

This memo is in response to yours of November 8, 1951, in which you make inquiry as to legal requirements regarding the leasing of a motor vehicle from one company to another and whether the Public Utility and registration plates and rights can be leased along with the vehicle from one company to another, etc.

The Maine Public Utilities Commission has never attempted to lay down any rules in respect to leased vehicles. It is generally recognized that an authorized carrier may, from time to time, augment his equipment by leasing additional equipment. The problem of knowing when the leased vehicle is used to augment the fleet of an authorized carrier and when it is used for the independent operation of the Lessor is a difficult one and is primarily a question of control.

It is also our understanding that, as a result of the vehicle check made at Kittery in mid-August, two cases are on their way to the Maine Law Court. One of these challenges the authority of the State of Maine to regulate an

interstate carrier and the other raises the whole lease question. If the State has no authority to regulate, an answer to the lease question will not, of course, be obtained. It is hoped, however, that as a result of these test cases, the troublesome problem of regulating leased vehicles can be settled. Meanwhile, it is not thought that there is any fixed rule of thumb that can be applied in all of these cases.

The Public Utilities Commission will issue plates to any authorized carrier to be used on a leased vehicle. The plate permit will designate the vehicle to which it is to be attached and it is to be used on the designated vehicle only when such vehicle is controlled by and in the service of the authorized carrier.

JAMES G. FROST
Assistant Attorney General

January 4, 1952

To W. Atherton Fuller, Jr., County Attorney, Hancock County
Re: Domicile and Residence, under Chapter 34, R. S.

. . . You call our attention to the expression "who has resided in this state" contained in the last paragraph of Section 16 of Chapter 34 of the Revised Statutes and the expression "a legal resident of this state," as used in Section 115. You ask if the word "resident" as used in Section 16 requires the physical presence of the person and feel that it does so require.

You recall that Section 16 states that a person is eligible for a resident license providing such person is domiciled in Maine with the intention to permanently reside and has resided here during the six months next prior to the date an application is filed for the license.

Domicile is composed of two elements, residence and the intent to reside permanently in that particular locality. Domicile differs from residence in that domicile is a broader term and includes the lesser, residence. One need not have a residence for all legal purposes, but one always has a domicile. However, both domicile and residence are still valid if a person leaves the State with the intention to return. In other words, if a person attends a school outside the State with the intent to return to the State after school is completed, then his domicile would be in the State of Maine. Take for example a teacher who has been domiciled and a resident in the State of Maine for a period of years and who attends Boston University during the summer months in fulfilling the requirements of the Department of Education. If this person should immediately return to the State of Maine and apply for a license under this chapter, we feel that he would be eligible, even though he was not continuously physically present during the six-month period immediately prior to the time of application. For this reason we feel that it cannot be said as a rule of thumb in all instances that "resided" as used in Section 16 requires the physical presence of the person.

Domicile and residency are sometimes used synonymously and sometimes have a varied meaning, according to the content of the statute involved. In the use of those words in Section 115 of Chapter 34 we feel that legal residency and domicile are synonymous and that the term "legal resident" as