

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years
1951 - 1954

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

used in that section means that a person is domiciled in the State of Maine, having a residence here with the intention to reside permanently in this State.

It has been said in this office that the eligibility requirements of a citizen to obtain a license under Chapter 34, with respect to the phrase "who has resided" are the same as those for eligibility to vote here. Such a requirement is also present in the Inland Fish and Game Laws, except that the period for which a person must have resided in this State is three months instead of six.

It is with this background that we feel that continuous physical presence is not necessary, if the interruptions are such as have been considered not to vitiate residence.

We have not issued any opinions directly in point with your questions, but we are attaching a copy of an opinion written by Mr. Fessenden, Deputy Attorney General, to the Governor of the State of Maine, which bears on your problems.

JAMES G. FROST
Assistant Attorney General

January 9, 1952

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Modifications of Agreement between State Agency and the Social Security Administration

We have your memo of January 8, 1952, in which you ask our opinion as to whether or not it is necessary for the Governor to approve modifications to the original agreement between our State agency and the Federal Security Administrator, under which contract benefits are extended to employees of political subdivisions of the State.

We quote the pertinent part of Chapter 395 of the Public Laws of 1951, which is to be considered in reaching our conclusion:

"Sec. 3. Federal-state agreement. The state agency, with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the federal security administrator, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of any political subdivision of the state with respect to services specified in such agreement which constitute "employment" as defined in section 2. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and federal security administrator shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

I. Benefits shall be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though such services constituted employment within the meaning of title II of the Social Security Act;