

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**

**REPORT**

**OF THE**

**ATTORNEY GENERAL**

**for the calendar years**

**1959 - 1960**

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Section 6 of the 1836 Charter contained no *express limitation*. Whatever obligation might by such charter provision have been imposed for the benefit of the public has been modified by the legislature in its express grant of power to the Public Utilities Commission to approve discontinuance of service.

Therefore, we conclude that the charter provision of 1836 is not a mandatory duty upon the Maine Central Railroad Co. The legislature has acted with regard to such a charter and has abrogated that command and it can no longer be considered to be in force.

We also conclude that the charter provision of 1836 is not new evidence, and further conclude that by various subsequent enactments to the general law affecting railroads the effect of that provision has been nullified.

FRANK E. HANCOCK  
Attorney General

October 17, 1960

Honorable David J. Kennedy  
State Representative  
Milbridge, Maine

Dear Mr. Kennedy:

This letter is in response to your oral request for an opinion relating to the reciprocity provisions of section 6 of Chapter 68, Revised Statutes of 1954, as amended. The provisions in question read as follows:

“ . . . The board may, in its discretion, grant certificates of registration to such persons as shall furnish with their application satisfactory proof that they have been registered in some other state, provided that such other state shall require a degree of competency equal to that required of applicants of this state. Persons of good character who have become registered as pharmacists by examination in other states prior to July 3, 1931 shall be required to satisfy only the requirements which existed in this state at the time when they became registered in such other states; and provided also that the state in which such person is registered shall, under like conditions, grant reciprocal registration as a pharmacist, without examination, to pharmacists duly registered by examination in this state. . . .”

With respect to the above-quoted provision, you inquire if a person registered in the State of Massachusetts in 1937 is eligible to receive a certificate when such person was not a graduate of a school or college of pharmacy or a department of pharmacy of a university.

Answer: No, such person is not eligible for registration under our reciprocity statute.

Since the person in question was registered as a pharmacist in Massachusetts in 1937, the first sentence of the above-quoted law, not the last sentence would be applicable:

“The board may, in its discretion, grant certificates of registration to such persons as shall furnish with their application satis-

factory proof that they have been registered in some other state, *provided that such other state shall require a degree of competency equal to that required of applicants of this state.*" (Emphasis ours)

A decision in this case rests upon the definition of the term "competency"—and there are two views that can be taken with respect to the use of that term:

Firstly, it might be said that it matters not what educational or practical experience background may have been required of an individual in order to become registered in Massachusetts in 1937—if in fact Massachusetts laws *now* require for registration a degree of competency equal to that required of applicants of this State, then the 1937 registrant is eligible for reciprocal registration in Maine.

It appears to us that this argument is fallacious.

The degree of "competency" of an individual already admitted to a licensed practice doesn't improve, or increase, as the laws of that licensing state are tightened to require further educational requirements of later applicants.

The test is "competency" as determined by whether the applicant was registered at a time when the requirements of the registering state were equivalent to Maine's requirements *today*. And we believe the prerequisites to registration such as educational and experience background are embraced in the term "competency."

Thus, if an applicant can show that he was registered in another state at a time when the requirements for applicants in that state were equivalent to those presently required for registration of residents of this state, then he may, in the discretion of the Board, be issued a certificate of registration.

As the problem was presented to us, the applicant was never graduated from a school or college of pharmacy. Our law now requires that a resident applicant for a certificate to practice pharmacy must be a graduate of a school or college of pharmacy or a department of pharmacy of a university, accredited by the American council on pharmaceutical education.

Not being a graduate of such a school or college, we are of the opinion that the applicant in question cannot comply with the requirement of our Maine law.

Very truly yours,

JAMES GLYNN FROST  
Deputy Attorney General

October 17, 1960

To: Harold S. Brooks, Department of Economic Development

Re: "Residence" in State of Maine — Qualification to Vote

I have your oral inquiry regarding residence in the State of Maine. The terms "residence" and "domicile" are frequently used synonymously but do not have identical meanings. "Residence" means living in a par-