

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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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-

ticular locality; "domicile" is residence coupled with an intent to make it a fixed and permanent home.

In regard to the qualification to vote, Article II, Section 1, of the Constitution of Maine provides:

" . . . Every citizen of the United States of the age of twenty-one years and upwards . . . having his or her residence established in this state for a term of six months next preceding any election, shall be an elector for governor, senators and representatives, in the city, town or plantation where his or her residence has been established for the term of three months next preceding such election . . ."

Section 2, Chapter 3, Revised Statutes of 1954, restates this constitutional proviso. Former opinions from this office have pointed up the fact that "residence" as used in the Constitution is domicile or legal residence.

Evidence of intent to make a permanent abode could be auto registration, operator's license, payment of taxes and church affiliation. Actual physical presence coupled with intent is the test prescribed.

Chapter 3, Revised Statutes of 1954, places the duty of determining the qualification in the hands of the municipal officers, subject to a right of appeal to the court.

I trust this will be of some aid to you, and if there are any more questions regarding this matter, please feel free to contact me.

GEORGE A. WATHEN
Assistant Attorney General

October 26, 1960

To: Robert G. Doyle, State Geologist

Re: Mining Licenses

I have your request for our opinion on the following queries:

1. Should the Mining Bureau file and accept staking of an area on the state lands or great ponds which a party has previously staked, recorded and been issued a license to mine by the bureau?

Answer: Section 2, Chapter 39-B, provides a person may enter on state lands to prospect for minerals after having been issued a prospector's permit. Section 3 provides for location of claims and the right to possession thereto and Section 4 provides for recording the claim on state lands and great ponds. Section 4 provides a right to possession of a claim after proper recordation and further requires certain work to be done by the claimant in order to avoid a forfeiture to the claim. In your question, I presume the steps prerequisite to the issuance of a license to mine have been properly taken. Section 5 authorizes the Maine Mining Bureau to issue a license to mine to a claim holder upon receipt of an application therefor accompanied by a survey, report of the proposed mining operations and the required license fee plus a land use ruling.