

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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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.

Section 5 further sets forth the royalty and rental payments to be paid by the licensee. It is my opinion at this point that if the Mining Bureau accepted another claim on the same land, it would be promoting breaches of the peace between a locator and one who has a prior claim which has been recognized by the act of the Mining Bureau in issuing a license to mine, which gives additional rights beyond those of the locator.

2. May the Maine Mining Bureau issue a license to mine with conditions and subsequently void the conditions, prior to issuing a renewal of the license?

Answer: Section 5, Chapter 39-B, provides that a license to mine shall be granted after the prerequisites have been met on such terms and conditions as the bureau may require and further states that such license shall be renewed on expiration providing the licensee satisfies the bureau that he has complied with the terms and conditions imposed by the bureau in his license. It is my opinion that the answer to the query is found in Section 5, in that the Bureau must determine factually whether or not there has been compliance with the terms and conditions and whether these terms and conditions are reasonable.

GEORGE A. WATHEN
Assistant Attorney General

October 26, 1960

To: Perry D. Hayden, Commissioner of Mental Health & Corrections

Re: Admission of Children to State Hospitals

I have your request for an opinion regarding the admission of children under the age of 16 years to the state hospitals on and after September 1, 1960.

Section 143-A, B and C, C. 27, R. S. 1954, provide that Pineland Hospital and Training Center shall be maintained for the care and education of children between the ages of 6 and 16 years who are deemed by the superintendent of the hospital to be suffering from psychoses, neuroses, psychoneuroses, behavior disorders or other mental disabilities. Therefore, children between these ages should be properly sent to the Pineland Hospital and Training Center and not to state hospitals.

GEORGE A. WATHEN
Assistant Attorney General

October 27, 1960

To: Warren G. Hill, Commissioner of Education

Re: Required courses in Public Schools — Physiology & Hygiene

I have your request for my opinion regarding the propriety of excusing certain students from instruction in the field of physiology and hygiene.