

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

for the calender years

1961 - 1962

Revised Statutes, chapter 3A, section 1, provides that "A person who is serving a sentence in a jail or penal institution is not an absentee voter." The question is whether the person incarcerated is "serving a sentence." There are no Maine cases on point. A California court, after reviewing various dictionary and text writers, concluded that "sentence" is applicable to criminal proceedings, it being the judgment upon which an appeal may be taken. *People v. Lopez*, 110 P. 2d 140. In a Colorado case in point, a sheriff released a debtor from the county jail prior to the year for which he was committed on the basis that the debtor had earned deductions from the time of imprisonment under an act concerning prisoners confined under sentence. The court held that one confined under body execution is not serving a sentence and the sheriff was liable on his bond for the release. *Hershey v. People*, 12 P. 2d 345. (1932). One who is in jail on a civil capias execution or is held pending a criminal trial (there being no bail or the prisoner is unable to raise bail) is not serving a sentence within the meaning of section 1 of chapter 3A.

It should be for the town clerk to determine whether the registered voter who seeks to vote as an "absentee voter" is in jail or penal institution as a result of the actions of a court of criminal jurisdiction which has formally found the accused guilty of the acts of which he had been charged. If the town clerk determines that there is no criminal proceeding involved or that there has not as yet been a criminal judgment rendered against the registered voter, the registered voter held in jail is entitled to vote as an absentee voter.

PETER G. RICH

Assistant Attorney General

November 1, 1962

To: C. Wilder Smith, Deputy Commissioner of Labor and Industry

Re: Bedding and Upholstered Furniture Law

You have presented for our consideration a brochure supplied by a firm selling office furniture to the medical profession and ask whether any of the pieces of furniture described in the brochure fall within the Bedding and Upholstered Furniture Law, Revised Statutes, chapter 30, sections 155 through 165.

Revised Statutes, chapter 30, section 155, II, states that articles of upholstered furniture shall mean "chairs, sofas, studio couches and all furniture in which upholstery or so-called filling or stuffing is used whether attached or not." The examining table, the "physio-therapy" table, and the orthopedic table all have a surface cushioned by what is described as a "poly-foam" cushion covered with U. S. Naugahyde, a synthetic fabric or plastic. The "poly-foam" constitutes a stuffing and brings the articles within the provisions of the statute. The cushion on the "operator's stool" being made and covered by the same materials falls within the definition of "cushion" in section 155, II-A. This article is likewise subject to the provisions of the statute.

All the other articles described in the brochure, not being upholstered, are excluded from the operation of the statute.

PETER G. RICH

Assistant Attorney General