

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

November 5, 1963

To: Joseph T. Edgar, Deputy Secretary of State

Re: Voting Registration by Non-resident Wives of Servicemen

Question:

(1) If a serviceman who is a qualified registered voter in the State of Maine marries a non-resident, must that non-resident reside in the State of Maine for the Constitutionally required six-month period before she may become qualified to vote in the State of Maine?

Answer:

Yes.

Opinion:

The non-resident spouse must "establish a residence" in this State as provided in our Constitution:

"Every citizen of the United States of the age of twenty-one years and upwards, excepting paupers and persons under guardianship, having his or her residence established in this state for the 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, and he or she shall continue to be an elector in such city, town or plantation for the period of three months after his or her removal therefrom, if he or she continues to reside in this state during such period, unless barred by the provisions of the second paragraph of this section; and the elections shall be by written ballot. But persons in the military, naval or marine service of the United States, or this state, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack or military place, in any city, town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the city, town or plantation where such seminary is established. No person, however, shall be deemed to have lost his residence by reason of his absence from the state in the military service of the United States, or of this state."

"Residence" generally is synonymous with "domicil." See chapter 3-A, section 1, "Definitions." There can be no absolute criterion by which to determine residence. Each case must depend on its particular facts or circumstances, and the question should be determined as one of fact. (18 A. Jur., Elections, § 56.) It would appear that physical presence is essential in effecting "residence" in the first instance.

"(B)odily presence in a place coupled with an intention to make such place a home will establish a domicil or residence." (*Sanders v. Getchell*, 76 Maine 158, 165.) See also 18 Am. Jur., Elections § 56, but that physical presence is not necessarily essential to the continuance of "residence" or "domicil." Intent being the important factor coupled with acts evincing such intent."

If you mean to "live in" by your term "reside" our answer is "yes." To establish her residence the new wife must, at the least, come to Maine, live

here for a short time with the intention of residing here. It need not be a continuous "residing in" for the six-month period.

Question:

(2) If the above-mentioned non-resident does not reside in the State of Maine at any time, does she, by virtue of marrying a Maine voting-resident serviceman, acquire voting residence in this state?

Answer:

No.

Opinion:

The doctrine that a married woman's domicile is fixed by the domicile of her husband does not necessarily apply to a "voting residence or domicile." She would still have to comply with the constitutional requirement as stated in the answer to question 1.

The answers to questions 1 and 2 sufficiently cover questions 3 and 4.

FRANK E. HANCOCK

Attorney General

November 6, 1963

To: Ernest H. Johnson, State Tax Assessor

Re: Diamond National Corporation — re dies

Facts:

Diamond National Corporation, manufactures in South Portland, Maine, dies for the production of molded pulp products by various other plants of the same corporation located in other parts of the country.

Diamond National purchases materials and parts and uses them in the manufacture of the dies. The dies, upon manufacture, are shipped by the South Portland plant out of state to the other plants.

The company, relying upon the definitions of "storage" and "'storage' or 'use'" in section 2 of the law, as well as the provisions of section 12-A of the law, maintains that these purchases are not taxable because the dies into which they are incorporated are shipped out of the state, and therefore the materials and parts should be considered as being kept within the state for subsequent use outside of the state, or being kept within the state for the purpose of subsequently transporting them outside the state.

Question:

Whether, in the circumstances indicated, the taxpayer is entitled to claim exemption on the purchase of materials and parts which are to be fabricated into dies in this state, when the completed dies are shipped outside this state to be used in the production of molded pulp products elsewhere.

Answer:

No.

Opinion:

The following law is applicable:

"A tax is imposed on the storage, use or other consumption in this State of tangible personal property, purchased at retail sale on and after July 1, 1963, at the rate of 4% of the sale price. . . ."
R. S. 1954, ch. 17, sec. 4.