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April 6, 1966

Kenneth M. Curtis

Secretary of State

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Attorney General

Voting Lists

FACTS:

You have inquired whether, in reference to 21 M.R.S.A. § 171, subsections 1 and 2 it is the duty of a Registrar or Board of Registration to remove automatically the name of every voter from the voting list who has been physically removed from the town or city more than three months. If the voter intends to otherwise maintain his residence in the town or city he should request his name be replaced on the voting list as set forth in Title 21, § 172, subsection 2. You also submit 6 steps you believe to be required by the Statute. You are requesting a ruling in order that your office may send instructions to town and city clerks to bring their voting lists current in accordance with this and other provisions of the Maine Statutes.

I am taking the liberty of somewhat rephrasing the questions for convenience in reply. Use of the word "Registrar" in this opinion means, Registrar of Voters. "Board" means Board of Registration, and "list" means the voting list.

Pertinent citations read as follows:

"§ 171. Powers and duties of registrar
The registrar has the exclusive power
to prepare and revise the voting list.

. . . .

2. List current. He shall keep the list current at all times by adding the names of new voters and by removing the names of those who have died, moved from the municipality more than 3 months previously with an apparent intention of abandoning their residence therein, or become disqualified to vote."

By way of background, we note that the portion of the constitutional definition of electors, from which the cited Title 21 is derivative, reads as follows:

Maine Constitution, Art. II, § 1. Qualification of electors. . .

Section 1. 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; 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. . . ."
(Underlining mine)

(Title 21, Section 243 and Section 246, subsection 4 reaffirms the constitutional removal provision but apply also to elections for other offices.)

QUESTION #1:

Is it the duty of the Registrar or the Board to automatically remove from the voting list every registered voter who has physically moved from the town or city three months previously? (Emphasis mine)

ANSWER:

No.

REASON:

Excluding persons disqualified for other reasons, the pertinent part of Section 171, subsection 2 with which the Registrar must primarily contend in this connection reads as follows:

"He shall keep the list current at all times. . . , by removing the names of those who have. . . moved from the municipality more than 3 months previously with an apparent intention of abandoning their residence therein, . . . "

This section applies only to voters already on the voting list and thus originally qualified to vote. The key words in this section on which the answer must turn are "with an apparent intention of abandoning their residence therein." What is the significance of this phrase? Although the Legislature has supplied no guidelines as to what constitutes intention to abandon or apparent intention to abandon, this phrase was added, without punctuation and without accompanying amendment, by P. L. 1963, c. 78, § 4. If this phrase did not appear in this section, or if the section could now be read without reference to the phrase, there would clearly be no question that the section must be construed as you contend, i.e., that removal would be automatic.

But addition of the quoted phrase was the only amendment of the section and the sole object of the amendment, at the time of the amendatory enactment. It is not possible that the phrase was positively and exclusively placed in this section by the Legislature by inadvertence. This phrase must have been inserted for some purpose. Since, as pointed out above, the section as it stood from 1961, without the phrase, would require automatic removal of any voter having so moved regardless of what evidence there might be that his move was not of permanent intent, and since the amending phrase appears to be for the benefit of the voter rather than of the registration officials, we must conclude that the Legislature intended that the former provision was too harsh in its effect.

Such an object would be consistent with the general presumption against unreasonably disenfranchising voters. It must be construed to be a recognition that many qualified Maine voters find it necessary to move for varying periods of time, in some instances longer than 3 months and sometimes intermittently, with a bona fide intention. (emphasis mine) To Make no permanent change of domicile.

Section 1, subsection 35, under the heading of "Definitions, construction" specifically applying to the election laws, reads "Resident" and "residence" refer to domicile and "domicile" is a legal term more precisely denoting permanence of residential intent than is true of the looser term "residence." The general rule is that one may have only one legal domicile though he might have plural residence.

QUESTION #2:

If the voter has moved from the municipality 3 months previously, but wishes to maintain his residence in the town of origin, and the registrar has removed his name from the voting list and forwarded the notice required by Section 172, should he request that his name be replaced on the voting list as set forth in Section 172, subsection 2?

ANSWER:

Yes. But see reasons below.

REASON:

Title 21, section 172 sets forth a detailed method of notice of removal by the registrar as well as a method for the voter to be replaced on the list.

Assuming that the registrar has taken the proper preliminary steps, as suggested in the reasons for Answer (1) above, there is no question that the voter must request that his name be replaced as set forth in subsection 2. The language of section 172 is mandatory as to the registrar's action. The language in the notice (subsection 1) puts the voter on adequate notice of presumption of disqualification if he fails to reply within 30 days, and the self-addressed post card notice required by subsection 2 adequately makes the request for him, provided he merely signs it with his address and drops it in the mail within 30 days. The election laws provide for notice (section 172) and appeal (section 173) designed to protect the voter's rights.

There is the possibility, of course, that the voter might claim that he did not receive the letter in time (the registrar may not know the actual forwarding address) or that the registrar had not perfected the steps preliminary to sending the notice. (See reasons for Answer (1) above) But he should, nevertheless, comply with the terms of the notice, and seek his remedy, if he wishes, on appeal.

QUESTION #3:

May instructions requiring the 6 steps suggested be properly sent to the Registrars via the municipal clerk?

ANSWER:

Yes. (But see reason below, qualifying steps 1 and 6.)

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REASON:

Your instructions seem to reasonably condense the Registrar's statutory duties in the reference situation to six procedural steps. However, step 1 should be qualified by the limitations suggested in the answer to question (1) above. We note also that there is an alternate appeal procedure through the municipal officers, (§ 173, 2) as well as the appeal directly to the court cited in step 6,

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