

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

28 M.R.S.A. § 103, for the reasons elaborated hereinabove. This latter section does provide the procedure whereby the voters of each such place can authorize the sale of malt liquor not to be consumed on the premises, as well as all the other local option questions specified in 28 M.R.S.A. § 101. Such procedure must be initiated by "petition signed by 20% or more of the persons resident in an unincorporated place requesting a vote on local options questions"

CHARLES R. LAROUCHE
Assistant Attorney General

September 13, 1971
Real Estate Commission

Leo M. Carignan, Executive Secretary

6 month and 3 month residency requirement

SYLLABUS:

The requirement that an applicant, for a real estate broker's or salesman's license, must be a resident who has maintained a residence in this State for six months and in a municipality for three months is an unconstitutional requirement.

FACTS:

An applicant for a real estate broker's or salesman's license is required to be a resident of this State qualified to vote in municipal and State elections. To be qualified to so vote one must, inter alia, have established a residence in this State for six months and in a municipality for three months.

QUESTION:

Whether the six month and three month time limitations imposed upon residents of this State is a constitutionally condoned limitation.

ANSWER:

No.

REASON:

The qualifications for a resident broker's or salesman's license are provided for in 32 M.R.S.A. § 4103 (1) (B), which provides in pertinent part:

"1. Qualifications. An applicant for a real estate broker's or salesman's license shall submit to the commission written evidence, verified by oath that the applicant:

* * * * *

"B. Is a resident of the State, qualified to vote in municipal and state elections prior to his application;"

The above statute establishes a discrimination on the basis of residents who are qualified to vote as opposed to those who are residents but have not met the

qualifications necessary to vote. Included in the requirements to vote are the requirements that one establish a residence in this State for at least six months, and in a municipality for at least three months, 21 M.R.S.A. § 241. The critical question is whether such a discrimination is constitutionally condoned. The statute established two classes of applicants who, we must assume, have met all of the other requirements of 32 M.R.S.A. § 4103, such as education, age, competency and moral character, except one class is not qualified to vote. On this basis, the Legislature has denied to one class, otherwise qualified, the right to enter a profession.

To support such a discrimination, it must appear that some justifiable and compelling governmental interest is being furthered.¹ *Shapiro v. Thompson*, 89 S.Ct. 1322, 394 U.S. 618, 22 L.Ed.2d 600 (1969).

Since the six month and three month residency requirement is the qualification which we are here concerned with, it will not be necessary to consider the other qualifications that one must have to vote under 21 M.R.S.A. § 241.

The question narrows down to whether the State has any justifiable and compelling interest that would be furthered by extending to one class of residents, namely those who have resided in this State for six months and in a municipality for three months, the right to act as a real estate broker or salesman while denying the same right to one who qualifies in all respects except he has not satisfied the six month and three month waiting periods.

The United States Supreme Court in *Shapiro v. Thompson*, supra, declared a welfare statute, which required that applicants for welfare in that state, be a resident of that State for one year, as unconstitutional. In doing so the Court said of that one year waiting period:

“On the basis of this sole difference the first class is granted and the second class is denied welfare aid upon which may depend the ability of the families to obtain the very means to subsist . . . On reargument, appellees’ central contention is that the statutory prohibition of benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying them equal protection of the laws. We agree. The interests which applicants assert are promoted by the classification either may not constitutionally be promoted by government or are not compelling governmental interests.” 22 L.Ed.2d at 611.

In the broad general sense this State may not deny to any person within its jurisdiction the equal protection of its laws. This State may, however, treat different classes of persons differently if there are valid differences between the classes. Whether or not the difference is a valid one must be determined in light of the purposes underlying the law creating the different classes.

Additionally, the privileges and immunities clause of the Constitution prohibits classifications based on non-citizenship unless there is something to indicate that the non-citizens are a peculiar source of the evil which the statute is aimed at curing.²

- 1) It should be emphasized that the constitutionality of the six month requirement for purposes of the right to vote is not at issue in this opinion. One year residency requirements for voting purposes have been upheld. Cf. *Cocanower v. Marston*, 318 F.Supp. 402 (1970). But Cf. *Lester v. Board of Elections for District of Columbia*, 319 F.Supp. 505 (1970); *Affeldt v. Whitcomb*, 319 F.Supp. 69 (1970).
- 2) It should be noted that the issue here presented does not concern the other requirements of 21 M.R.S.A. § 241 (1), and I express no opinion with respect to the constitutionality of those requirements.

Toomer v. Witsell, 68 S.Ct. 1156, 334 U.S. 385, 92 L.Ed. 1460. Rehearing denied 69 S.Ct. 12. 335 U.S. 837, 93 L.Ed. 389, (1948). See also *Russo v. Reed*, 93 F. Supp. 554 (1950). Where a Maine statute which discriminated against non-residents was struck down.

The fact that the right here involved is one given by state statute and not one necessarily guaranteed by the Federal Constitution, does not insulate that right from the dictates of the 14th Amendment. U.S. ex rel. *Keating v. Bensinger*, 322 F.Supp. 784 (1971).

The reasonableness of the discrimination between residents of six months or more and those who are residents for less than six months must, in the final analysis, be tested in light of this State's interests.

This State's interests are disclosed through an analysis of the purposes of the real estate brokerage laws.

In general the purposes underlying such laws are to protect the public against fraud and incompetency in real estate transactions. *Dupeck v. Union Ins. Co. of America*, 329 F.2d 548 (1964); *Wickersham v. Harris*, 313 F.2d 468 (1963). *State v. Rose*, 97 Fla. 710, 122 So. 225 (1929).

Consistent with those purposes, this State could, as it has done, require that applicants for a broker's or salesman's license meet certain minimum educational requirements, demonstrate minimum competence in real estate transactions and demonstrate their honesty and good character. Assuming that one has satisfied all of the standards established in the above areas, what legitimate reasons could that legislature have for imposing an additional six month and three month waiting period? How can it be said that one person who has met all of the requirements, other than the waiting period, is any less qualified to practice in the profession than one who has completed the waiting period?

The resident for a day is entitled to the same rights and privileges under this State's laws as the resident of six months unless there appears at least a reasonable basis for denying him those rights.

I find no reasonable basis for such a denial and must therefore conclude that the six month and three month residency requirements for obtaining a broker's or salesman's license is unconstitutional.

CLAYTON N. HOWARD
Assistant Attorney General

September 23, 1971
Education

Kermit S. Nickerson, Deputy Commissioner

Legality of Construction Subsidy Paid District on Basis of Lease-Purchase Payments.

SYLLABUS:

State construction subsidy can legally be paid an administrative unit on the basis of individual "lease-purchase payments" made to a building contractor by the unit for capital outlay purposes (two-bay addition to school bus garage).