

MAINE STATE LEGISLATURE

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January 4, 1972

Joseph T. Edgar, Secretary of State

Secretary of State

James S. Erwin, Attorney General

Attorney General

Interpretation of Article II, § 1 of the Constitution of the State of Maine and 21 M.R.S.A. § 242(4)

As a result of my office's participation in a legal action, in the United States District Court for the District of Maine, Judge Gignoux has requested that I issue the following memorandum, at this time, which specifically interprets the provisions of Article II, section 1 of the Constitution of the State of Maine and Title 21, section 242(4) of the Maine Revised Statutes as they pertain to the establishment of a Maine voting residence by students.

I am addressing my comments to you, because it is my understanding that, in connection with your participation in the same legal action, you have agreed to distribute copies of this memorandum to all of the Voting Registrars and Boards of Voter Registration in the State so that they may all be advised concerning this matter.

The pertinent provision of Article II, section 1 of the Constitution of the State of Maine reads as follows:

"... 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

and Title 21, section 242(4) of the Maine Revised Statutes provides that,

"A student may not establish a voting residence by attending an educational institution."

The Maine Supreme Judicial Court has had occasion only once to interpret the above-quoted language of the Maine Constitution. The Court's interpretation of the Constitutional provision occurred in the case of Sanders v. Getchell, 76 Me. 158 (1884). The Court stated in its decision that,

"The constitutional interdiction is in these terms: 'The residence of a student at any seminary of learning shall not entitle him to the right of suffrage in the town where such seminary is situated.' It is clear enough that residing in a place merely as a student does not confer the franchise. Still a student may obtain a voting residence, if other conditions exist sufficient to create it. Bodily

presence in a place coupled with an intention to make such place a home will establish a domicile or residence. But the intention to remain only so long as a student, or only because a student, is not sufficient. . . . He (the student) gets no residence because a student, but being a student does not prevent his getting a residence otherwise. . . . Each case must depend largely upon its peculiar facts." (Emphasis supplied)

In essence, the Court in the Sanders case has said that the fact of being a student is a neutral factor; that a student gains nothing nor loses anything with respect to his voting residence from the fact of being a student. Consequently, under Maine law, local Registrars and Boards of Registration should not place students in any better nor in any worse position than non-students when making a determination as to whether a voting residence has been established.

Although the Maine Supreme Judicial Court has never had occasion to interpret Title 21, section 242(4) of the Maine Revised Statutes, it is my opinion that this statutory provision is, in effect, a re-statement or reiteration of the pertinent part of Article II, section 1 of the Maine Constitution which was interpreted by the Court in the Sanders case and, therefore, that interpretation may also be applied to section 242(4).

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JSE:mfe