

MAINE STATE LEGISLATURE

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SYNOPSIS:

The issue of domicile for purposes of the issuance of a lobster and crab fishing license by the Department of Sea and Shore Fisheries, must be resolved by evaluation of the facts underlying each particular application in light of various established criteria.

FACTS:

12 M.R.S.A. § 4404 provides that the Department of Sea and Shore Fisheries (the "Department") may issue licenses for lobster and crab fishing to a person who, with specified exceptions, has been "a legal resident" of Maine for three years. 12 M.R.S.A. § 3401.22 recites that for purposes of the laws administered by the Department, "resident and residence each refer to domicile." The Department has received and expects to continue to receive, applications for lobster fishing licenses from persons who are essentially "summer residents" and from others whose connections with the State of Maine are less than that of the ordinary full-time resident. Persons applying for such licenses declare themselves to be Maine domiciliaries on the application form.

QUESTION:

What criteria should the Department use in determining whether or not an applicant for a lobster fishing license is, in fact, a Maine domiciliary?

ANSWER:

The criteria are listed and discussed below.

REASONING:

First of all it should be pointed out, and, indeed, the phrasing of the issue assumes, that the Department is not bound by the declaration of domicile on the application form. In issuing licenses, the Department enjoys a certain degree of administrative discretion in making a good faith determination of whether or not prerequisites for the issuance of a license have been met. The Department is entitled to require an applicant

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to demonstrate to the reasonable satisfaction of the Department that the applicant qualifies for the license under a statutory standard, such as domicil. The issue of whether any particular applicant meets the statutory standard is a factual matter and may depend upon the circumstances of each case. In making any such administrative determination, the Department may provide to an applicant a hearing on the issue of his domicil. Regardless of whether or not a hearing is provided, however, every applicant denied a lobster fishing license on the grounds of lack of domicil has the right to appeal the decision of the Department and a court may affirm, reverse or modify the Department's determination. Because judicial review must be sought within 30 days after notice by the Department of its refusal, it is usually in the interest of the Department to give written notification of its determination promptly after that determination has been made.

Domicil has been defined as the place where a person has his true, fixed and permanent home and principal establishment, to which, whenever he is absent, he intends to return, not for a mere special or temporary purpose, but with the present intention of making a permanent home. The basic test of domicil is an intention to stay indefinitely in a place joined with some objective indication consistent with that intent. Individuals who have previously been Maine domiciliaries and whose contacts with Maine have decreased have a distinctly lesser burden in showing that Maine remains their place of domicil, than individuals who have been domiciliaries of other states and who seek to show a change of domicil to Maine. In general, whether a person has changed his domicil from one place to another depends upon his intention and a man's own declarations are evidence of his intent. Because every applicant for a lobster fishing license will have declared his intent to be a Maine domiciliary, however, it is important to note that a change of domicil cannot be effected by a mere desire to get the benefit of one or more of the legal consequences of having a domicil in a certain place if there is no wish to change one's home to that place. Intent is not a matter of artifice. It does not

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rest with a man to determine the place of his domicile by expressing an intent which is contrary to the facts in an attempt to avoid the inevitable legal consequences of such facts. A person's state of mind is more frequently revealed by his actions than by his words. In some situations, a man's own declarations regarding his intentions with respect to acquiring a domicile are to be accepted with considerable reserve and are to be considered in the light of the motive of the person making the declaration. 25 Am. Jur. 2d Domicil §§ 24, 91-93.

Set out below are some of the more common indicia of the intent requisite for a domicile in Maine. While the list is not entitled to be exclusive, an individual clearly need not meet all or even most of the criteria in order to establish a Maine domiciliary;

1. Maintenance of one's only residence within Maine;
2. When an individual has more than one residence, the place of employment and amount of time spent in Maine;
3. Absence of fixed place of abode and nature of abode in Maine (e.g. room, apartment, house etc.);
4. Legal interest in place of abode in Maine (e.g. guest, tenant or owner);
5. Place of registration to vote and of voting in national as well as local elections;
6. Declarations of intent to be a Maine domiciliary, contained in written documents such as insurance policies, deeds, wills, letters, hotel registers and contracts.
7. Filing a Maine income tax return and filing federal income tax return in Maine (a Maine domiciliary is generally required to file a Maine income tax return unless he maintains no permanent place of abode in Maine and maintains a permanent place of abode elsewhere and spends, in the aggregate, less than 30 days of the taxable year in Maine, 36 M.R.S.A. § 5102.5);
8. Possession of a Maine driver's license and registration of one's car in Maine ("residents", presumably including domiciliaries, generally may not operate a motor vehicle in Maine without registration of the vehicle or without a Maine drivers license, 29 M.R.S.A. §§ 102, 531);

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9. Ownership of property, selection of burial place, and affiliation with social and religious institutions in Maine;
10. Place of birth;
11. Location of draft registration board; and
12. Any recent resident hunting and fishing licenses in other states.

Each factual situation must be examined upon its own merits and evaluated in light of the above criteria in order that the Department can reach a fair conclusion based upon a preponderance of credible evidence. That is to say, in the exercise of its administrative discretion and often as a matter of personal judgment, the Department, using the above tests, must determine, with respect to applicants for lobster fishing licenses, the true intention of such applicants that Maine is their home.

LMS/mf

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