

MAINE STATE LEGISLATURE

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September 24, 1973

Nicholas L. Caraganis, Director

Personnel

Charles R. Larouche, Assistant

Attorney General

Maine residency as a criterion for employment in the classified service, R.S., T. 5, Sections 556, 557 and 673.

This replies to your memo on this subject dated August 22, 1973.

The word "citizen" as used in 5 M.R.S.A. § 556, means, as expressly stated in that section, a citizen of the United States of America. A "citizen" means "a native or naturalized person who owes allegiance to a government and is entitled to reciprocal protection from it." Webster's Seventh New Collegiate Dictionary.

The word "citizen" as used in 5 M.R.S.A. § 557, means a "resident" of Maine. The catch phrase of Section 557 uses the phrase "Maine Citizen's Preference;" the first sentence of § 557 uses the phrase "citizens of the State of Maine"; and the second and third sentences use the phrase "Maine residents." It seems clear that each of these phrases are intended to qualify the individual entitled to the stated "preference." The over-riding thrust of Section 557 is to give a preference to a "resident" of Maine. Superimposed upon this preference eligibility requirement is the additional requirement in Section 556 that he also be a citizen of the United States of America.

The word "resident" as used in Section 557 means the same thing as the phrase "legal resident of Maine" as used in Section 673.

The phrase "legal resident of Maine" as used in Section 673 means a person who is domiciled in Maine. The term "domiciliary" has been explained at length in a formal opinion of this Department, written by Assistant Attorney General Schepps, dated April 27, 1972, to the Department of Sea & Shore Fisheries. That explanation is applicable in this instance. For your convenience, a copy of that opinion is attached hereto.

Your final question refers to the new section 557 which reads: "Maine residents shall be certified ahead of all non-residents. Non-resident eligibles, placed upon registers under relevant statutory provisions of this section, may be certified when there is an insufficient number of qualified Maine residents." You ask whether or not, in view of the new section 557, all non-resident applications for examination for classified positions must now be accepted, thereby eliminating the limitation in Section 673--"that admission to examinations shall be open only to those who have been legal residents of Maine for at least one year." The answer to that question is negative. Implied repeals are not favored; the two seemingly conflicting provisions must be construed so that they are both operative and harmonious, if reasonably possible. In this case, it seems to me

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that both of these provisions can stand together effectively and harmoniously. Section 673 limits examination to residents of Maine, with the specified exception; in the event of the "exception," the non-resident may take the examination; after the examination, residents are certified ahead of the non-residents; and non-residents may only be certified when there is an insufficient number of qualified Maine residents.

If I can be of any further help to you in this matter, please advise me.

CHARLES R. LAROUCHE
Assistant Attorney General

CRL:mfe

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