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Joseph T. Edgar, Secretary of State State

Jon A. Lund, Attorney General Attorney General

Interpretation of Article II, Electors, Section 1, Constitution of Main

SYLLABUS:

A person otherwise qualified to vote in this State is not precluded from changing his voting residency during the three-month period immediately following his or her removal from one municipality to another. Any suggestion to the contrary by the literal terms of Article II, § 1 of the Maine Constitution, as recodified pursuant to Article X, § 6 of the Constitution is without force or effect because it would constitute a substantial change in the meaning of the Article not authorized by the recodification procedures.

FACTS:

On March 21, 1972, the United States Supreme Court decided Dunn v. Blumstein, ____U.S. ____, 92 S.Ct. 995, 31 L.Ed. 2d 274 (1972) which held that durational voting residence requirements exceeding three months were unconstitutional. On May 19, 1972, this office issued an opinion that the Supreme Court's decision rendered invalid Title 21 M.R.S.A. § 241, sub-§ 4 and Article II, Section 1 of the Maine Constitution insofar as they required three months or longer residence as a condition precedent to voting eligibility.

As a consequence, the 106th Legislature revised the State election laws by virtually eliminating entirely durational voting residence requirements (P.L. Chapter 414, 1973). The only explicit residency requirement under the revised election laws is that a voter otherwise qualified "shall have established a residence in this State and in a municipality in which he resides." 21 M.R.S.A. § 241, as amended. Residence is defined in 21 M.R.S.A. § 242, as amended as "that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return."

In addition, the 106th Legislature approved certain deletions from Article II § 1 of the Maine Constitution relating to electors which the Chief Justice of the Maine Supreme Judicial Court deemed to be appropriate, pursuant to his authority to recodify the Constitution under Article X, § 6 of the Constitution. See Chapter 29, Resolves 197

The precise omissions to Article II, § 1, submitted by the Chief Justice and approved by the Legislature are emphasized below:

> "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; and the elections shall be by written ballot . . . ."

The Chief Justice did not propose omitting the language in Article II which provides that an elector who changes his place of residence within the State shall continue to be an elector in the municipality in which he or she previously qualified for a period of three months after his or her removal therefrom*

QUESTION:

Under the revised election laws and Article II, § 1 of the Maine Constitution, as recodified, may a qualified voter change his or her voting residence during the three-month period immediately following his or her removal from one municipality in Maine to another?

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* In a note to the proposed codification of Article II, § 1, the Chief Justice explained the purpose of the deletions as follows:

> "Under Dunn v. Blumstein . . . similar durational residence requirements as were present in Section 1 of Article II were declared unconstitutional and thus such durational residence provisions are not now in force and were omitted."

ANSWER:

Yes.

REASONS:

There can be no question but that by enacting P.L., Chap. 414, 1973, entitled "An Act to Revise the Election Laws," the legislature intended to eliminate the offensive three-month durational residence requirements which existed under the previous statutory scheme. 21 M.R.S.A. § 241, which contained the offensive requirement, was repealed and replaced with a new provision which does not set forth any fixed durational prerequisites. P.L. Chapter 414, 1973, § 7.

Under the revision, any person otherwise qualified may vote in the municipality in which he resides, 21 M.R.S.A. § 241, as amended. And, as noted above, residence is not defined in terms of any inflexible minimum durational requirements, but rather as a flexible concept defined in terms of where a voter's "habitation is fixed."

When the Chief Justice undertook to delete the offensive provisions of Article II, § 1, he eliminated those provisions which literally fell within the Supreme Court's proscriptions enunciated in Dunn v. Blumstein, namely, those provisions which required six months' residence in the state and three months' municipal residence as preconditions to voting eligibility. However, the Chief Justice left undisturbed the language of Article II which provides that any elector who changes residence,

> ". . . shall continue to be an elector in such city, town, or plantation for the period of three months after his removal therefrom, if he or she continues to reside in this State during such period . . . ,"

apparently treating this clause as a separate and distinct provision which did not transgress the constitutional paramaters outlined in Blumstein.

While it is clear that the omissions which the Chief Justice proposed and which the legislature approved eliminated the offensive durational residency requirements in the first instance, the retention of the residual voting eligibility clause referred to above may possibly give rise to some question as to the ability of a voter to

change his voting residency within the State during the three-month period following his removal from one municipality to another. Indeed, read literally, Article II, as recodified, would appear to preclude a change in voting residence for a period of three months.

However, in order to properly interpret the effect of the recodification, and the consequence of not omitting the residual voting eligibility language in the Article, it is important to examine the relationship of the language which was omitted to that which remains. In addition, we must review the purpose and scope of the recodification procedure proscribed by Article X, § 6 of the Constitution.

Prior to Blumstein, under Article II, § 1 of our Constitution, a person could only register to vote if he lived in the State for six months, and in a particular municipality for three months preceding an election. If the voter moved from one municipality to another, he or she could not vote in the new municipality until a three-month durational requirement in the new place of residence was satisfied. It is for this reason that Article II preserved an elector's ability to vote in the municipality in which he or she previously resided for a period of three months after his or her removal therefrom. The three-month residency requirement and the three-month retention of eligibility in the community of one's previous residence were inextricably interrelated, the one proscribing a precondition to voting eligibility and the other preserving that eligibility in those persons who had become qualified electors for a limited period, i.e., until it was physically possible for them to establish a new voting residency by residing in a different community within the State for a period of three months.

In short, at the time the Chief Justice embarked on the task of suggesting to the legislature the manner in which Article II, § 1 of the Maine Constitution should be conformed to the holding of Blumstein, Article II precluded a person from becoming eligible to vote unless he resided in a community for a period of three months, but preserved his eligibility, once established, until a new voting residency could be established in a different community.

The recodification procedures are set forth in Article X, § 6 of the Constitution, which provides, in pertinent part, as follows:

> "The Chief Justice . . . shall arrange the Constitution . . . omitting all sections, clauses and words not in force and making no other changes in the provisions or language thereof, and shall submit the same to the legislature . . . and the draft and arrangement, shall be enrolled on parchment and deposited in the office of the Secretary of State . . . ." (Emphasis supplied)

In view of the explicit constitutional direction to make no changes other than omitting words no longer in force, it is clear that Article II cannot have a meaning subsequent to recodification which represents a substantive departure from the meaning of that Article prior to the recodification, save, of course, the elimination of such words which are no longer of any force.

A noted above, a literal reading of Article II, as recodified, appears to provide that a person is required to retain his previous voting residency for three months whenever the voter moves from one municipality to another, i.e., that he or she is precluded from establishing a different voting residency for a period of three months following his or her removal from the place of previous voting residency. However, such a construction of Article II, as recodified, would not be permissible for several reasons.

In the first place, under such an interpretation, the residual eligibility provision would no longer serve as a means of preserving a place to vote to a person who has moved from one community to another and has not resided in the new community for three months. Rather, the provision would act as a bar to a person seeking to immediately establish a different voting residence in a different community to which he has moved and established a new residence. Such a construction would obviously infuse Article II, § 1 with a new meaning quite different from the meaning of the Article prior to the recodification, and would not, therefore, be a viable interpretation.

Moreover, such a mandatory residual eligibility requirement would itself constitute a three-month residency precondition to voter eligibility to any person who happens to move from one community within the State to another, and may, therefore, itself violate the holding in Blumstein.

Nor can effect be given to the language in question by reading it as creating a permissive right in the voter. Under such a construction (which would involve reading the word "shall" as meaning "may") the elector would have a choice - he or she could either register in the new place of residence immediately, or refrain from registering in the new place of residence, electing instead to vote for a period of three months, in his or her previous place of residence. Such a choice clearly did not exist under Article II prior to the recodification and would unquestionably represent a substantive change in the meaning of the Article contrary to the provisions of Article X, § 6.

Accordingly, irrespective of what Article II, as recodified, may by its express terms appear to mean, the foregoing analysis demonstrates that the residual residency language is without vitality and should be considered as having no force or effect. Reading Article II in this light, there is nothing in the Article which would preclude a person otherwise qualified to vote from changing his or her voting residence during the three-month period immediately following his or her removal from one municipality within the State to another.

Jon A. Lund
Attorney General

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