

MAINE STATE LEGISLATURE

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Sub *Gov* *yes*
January 25, 1974

Peter Damborg, Deputy

Secretary of State

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State Prison Inmate Eligibility for Office of Governor.

SYLLABUS:

A prisoner serving a sentence in the Maine State Prison for a felony conviction is not barred by statute or the Constitution from becoming a candidate for Governor of the State.

FACTS:

The Secretary of State has received a request from an inmate of the State Prison, Thomaston, for nomination petition forms so that he can undertake to run for the Office of Governor of the State of Maine. It appears that except for the circumstance that he has been convicted of robbery, is an inmate of the State Prison, serving a sentence of confinement for 20-40 years in that Prison, and will be eligible for parole on May 16, 1977, the inmate seems to be otherwise eligible under Article V, Part First, Section 1, Constitution of Maine, to be Governor.

QUESTION:

Whether or not the circumstance that one is an inmate of the Maine State Prison, serving a sentence for a felony conviction, constitutes a legal basis for disqualification to be Governor of the State of Maine?

ANSWER:

No.

REASONS:

Article V, Part First, Section 4, Constitution of Maine states the requisites for qualification to be Governor:

"The Governor shall, at the commencement of his term, be not less than thirty years of age; a citizen of the United States for at least fifteen years, have been five years a resident of the State; and at the time of his election and during the term for which he is elected, be a resident of said State."

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Article V, Part First, Section 5, provides that the following shall constitute disqualification:

"No person holding any office or place under the United States, this State, or any other power, shall exercise the office of Governor."

It appears from the information accompanying the requested opinion that the person requesting the nominating petition, forms meets the qualifications specified in Article V, Part First, Section 4. There is nothing in Section 4 which requires as a qualification that the candidate for Governor be free of incarceration or devoid of felony conviction. The only constitutional disqualification is that which is stated in the above-quoted Article V, Part First, Section 5. The status of a prisoner serving a sentence is certainly not that of one holding any office nor does it constitute "holding a place;" such phrase refers to one who is holding some position. In any event, the circumstance that he is being held in a State place, i.e., the State Prison, is clearly not the act of one who is "holding a place."

It may be argued that the prisoner should not be considered eligible to run for Governor because if elected he could not perform the duties of the office. The provisions of 34 M.R.S.A. § 527 permit rehabilitation of inmates under work release programs. Release of a prisoner may occur to permit him to participate in employment. Moreover, the same statute allows 10-day furloughs to inmates or prisoners of penal and correctional institutions consistent with rehabilitation of the inmate or prisoner. Surely, the position of Governor may be considered an employment within the work-release statute, and a sufficient reason for furlough.

In the present instance, the prisoner will not be eligible for parole until mid-1977. However, pardoning powers are vested in the Governor and Executive Council. Consideration of whether a State Prison inmate, if elected Governor, could grant himself a pardon is a question that can best be treated when the occasion arises.

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