

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

March 4, 1976

Markham Gartley, Secretary of State

State

David Roseman, Assistant

Attorney General

"Resident"

You have asked two questions regarding the word "resident" as it is used in the Maine Constitution. From your memo of February 17, 1976, and our discussion on February 24, 1976, I understand your questions to be as follows: (1) What is the correct definition of the word "resident" as it is used in Article IV, Part 1, § 4 of the Constitution of the State of Maine? and (2) What criteria should be used to ascertain a person's residence pursuant to Article IV, Part 1, § 4 of the Maine Constitution? These questions can be answered together.

Article IV, Part 1, § 4 of the Maine Constitution states:

"No person shall be a member of the House of Representatives, unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty-one years, have been a resident in this State one year; and for the three months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the town or district which he represents."

It is stated in applicable part in Article IV, Part 3, § 3 of the Constitution of Maine that "[e]ach House shall be the judge of the elections and qualifications of its own members. . . ." The Maine Supreme Judicial Court has held that the power of each House to judge the qualifications of its members is "exclusive and plenary," and may be exercised when a member's qualifications ". . . are brought into question for any reason. . . ." Lund ex rel. Wilbur v. Pratt, 308 A.2d 554, 560-61 (1973); Opinion of the Justices, 157 Me. 98 (1961). Being a "resident" for certain periods of time is one of the qualifications set forth in Art. IV, Part 1, § 4 of the Maine Constitution for being a member of the House of Representatives. Therefore, with regard to that Constitutional section, the House of Representatives has the authority to determine the meaning of "resident," and the criteria to be used in ascertaining a person's residence.

Markham Gartley, Secretary of State  
Page 2  
March 4, 1976

It should be noted, however, that we do believe that the House of Representatives has, by statute, determined the meaning of "resident" as used in the Constitution, Art. IV, Part 1, § 4. In 21 M.R.S.A. § 443 the Legislature has statutorily set out qualifications for candidates for federal, state or county offices. With regard to a candidate for the House of Representatives, 21 M.R.S.A. § 443, requires that "[h]e must maintain [his] voting residence during his term of office." It seems clear that the requirement in 21 M.R.S.A. § 443 that a Representative must maintain his voting residence during his term of office was made with reference to the Constitutional requirement in Art. IV, Part 1, § 4, that a Representative "during the period for which he is elected, shall continue to be a resident in the town or district which he represents."<sup>1/</sup> And 21 M.R.S.A. § 242 states in applicable part that:

"Voting residence is governed by the following provisions. . . . The residence of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return."

Therefore, we believe that the above definition of residence would determine the place in which a person was a resident, for the purposes of the Constitution, Art. IV, Part 1, § 4. It must be emphasized, however, that the foregoing expression of our view is advisory only. While we would, of course, be pleased to advise the House, upon its request, more fully on the above questions, resolution of these questions should be by the House.<sup>2/</sup>

---

DAVID ROSEMAN  
Assistant Attorney General

DR:mfe

cc: Representative Walter Birt

---

<sup>1/</sup> See, e.g., Statement of Fact to L.D. 259, which was enacted as P.L. 1971, c. 41, a copy of which is attached hereto.

<sup>2/</sup> From our conversation on February 24, 1976, I understand that you might have other questions regarding the term "resident" as it is used in various statutes. Please feel free to contact this office if we may be of assistance to you in answering those questions.

---

---

ONE HUNDRED AND FIFTH LEGISLATURE

---

---

Legislative Document

No. 259

---

---

S. P. 95

In Senate, January 20, 1971

Referred to Committee on Election Laws. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Shute of Franklin.

---

---

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

---

---

AN ACT Relating to Qualification of Candidates for the Legislature.

---

---

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 21, § 443, sub-§ 1, additional. Section 443 of Title 21 of the Revised Statutes, as amended by section 2 of chapter 225 of the public laws of 1967, is further amended by adding a new subsection 1 to read as follows:

1. Exception. The first sentence of this section shall not apply to candidates for the House of Representatives and the Senate.

STATEMENT OF FACT

The Constitution, Article IV, Part First, Section 4, sets out qualifications of members of the House of Representatives. Article IV, Part Second, Section 5, does the same for State Senators.

Neither section requires them to be voting residents of their districts on April 1. Hence, the first sentence of section 443 is unconstitutional when applied to candidates for such offices.