

# MAINE STATE LEGISLATURE

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March 26, 1976

Honorable Walter A. Birt  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Birt:

In your letter to me of March 9, 1976, you ask for an opinion from our Office regarding the following question: Does the provision contained in Article IV, Part 1, § 4 of the Maine Constitution, which states that a member of the House of Representatives must "... have been a resident in this State one year . . .," refer to the year directly preceding election?

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."<sup>1/</sup>

In construing a constitutional provision, the intent of the framers of the provision and of the people adopting it must be given effect. See Cooley's, Treatise on Constitutional Limitations, 8th Edition, Volume One, page 124; 16 Am.Jur.2d, Constitutional Law, § 64.

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<sup>1/</sup> It should be noted here that Article IV, Part 2, § 6 of the Maine Constitution states that, "The Senators shall be twenty-five years of age at the commencement of the term, for which they are elected, and in all other respects their qualifications shall be the same as those of the Representatives."

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The Maine Supreme Court has stated that in construing the Constitution ". . . we look primarily to the language used which may be illumined in cases of doubt by the surrounding circumstances." Farris ex rel. Dorsky v. Goss, 143 Me. 227, 230 (1948).

Prior to gaining statehood in 1820, Maine was a District of the State of Massachusetts. On October 27, 1819, those persons assembled at the Maine Constitutional Convention appointed a committee to prepare an address to the people of Maine regarding the proposed Constitution of Maine. The "Address" was to accompany the proposed Constitution which was to be submitted to the people for their adoption. In part said "Address" stated:

"The Constitution of Massachusetts, venerable as the work of the fathers of the revolution, endeared to the people by many associations and replete with the soundest principles of liberty and government, has in forty years experience proved inconvenient and defective in some few of its provisions.

"Assuming that instrument for a basis, the convention proceeded to frame a Constitution for the State of Maine, deviating in those cases only, where the experience of this and of other States in the Union seemed to justify and require it." (emphasis added) See Perley, Debates and Journal of the Constitutional Convention of the State of Maine.

Thus, we believe that in construing the Maine Constitution, reference can properly be made to that Constitution of the State of Massachusetts which was in existence at that time. Chapter II, Section III, Article III of the Massachusetts Constitution provided in applicable part that ". . . no person shall be qualified, or eligible, to be a member of the [House of Representatives] unless he . . . for one year at least next preceding his election shall have been an inhabitant of . . . the town or towns he shall be chosen to represent. . . ." However, Chapter II, Section II, Article V of the Massachusetts Constitution provided in applicable part that ". . . no person shall be capable of being elected as a Senator . . . who has not been an inhabitant of this Commonwealth for the space of seven years, three of which immediately preceding his

election, and in the district for which he shall be chosen."  
(emphasis added)<sup>2/</sup>

That Constitution of Massachusetts which was in effect at the time of the adoption of the Maine Constitution required that to be qualified for the office of State Senator a person must have been an inhabitant of the State for 7 years. Apparently, however, the person seeking that Office had only to be an inhabitant of the State for 3 years immediately preceding his election; the other 4 years of the State inhabitancy requirement could have been fulfilled at any time. Since the Maine Constitution used the Massachusetts Constitution as its basis (see the "Address," supra), it is not unreasonable to construe Article IV, Part 1, § 4 and Article IV, Part 2, § 6, of the Maine Constitution as not requiring residence in this State for one year next preceding the commencement of the period for which a person is elected. Those Sections of our Constitution may reasonably be construed as requiring residence in this State for one year at any time.

Furthermore, it has been stated that:

"Whether we are considering an agreement of the parties, a statute, or a constitution, with a view to its interpretation, the thing which we are to seek is the thought which it expresses. To ascertain this, the first resort in all cases is to the natural signification of the words employed, in the order of grammatical arrangement in which the framers of the instrument have placed them. . . ." (emphasis added) Cooley's, Treatise on Constitutional Limitations, supra, Volume One, page 127.

And, while punctuation is not a controlling factor in constitutional construction, see 16 C.J.S., Constitutional Law, § 19, punctuation may be resorted to as an aid in dissolving an obscurity. In re Opinion of the Justices, 191 N.E. 33 (Mass., 1934). A reading of Article IV, Part 1, § 4 of the Maine Constitution, as it has been phrased and punctuated, would indicate that the one year residence requirement may be met at any time, and not only during the year next preceding the commencement of the period for which the person is elected. See also, Farris v. Goss, supra.

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<sup>2/</sup> This portion of the Massachusetts Constitution was later amended, in 1857 and in 1930, so that it now provides in part that to be qualified for the office of Senator, a person must have been ". . . an inhabitant of this Commonwealth five years at least immediately preceding his election, and at the time of his election shall be an inhabitant of the district for which he is chosen. . . ."

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The answer to the question you have raised is not, however, free from doubt. And as we advised in our earlier opinion of March 4, 1976, to which opinion your letter makes reference, Article IV, Part 3, § 3 of the Maine Constitution provides in applicable part 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 this power of each House to judge its members' qualifications 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). The question you pose concerns one of the qualifications for being a member of the Maine House as set forth in the Maine Constitution, Article IV, Part 1, § 4.

We would, of course, be pleased to provide the House with additional assistance, upon its request, regarding this issue.

Very truly yours,

JOSEPH E. BRENNAN  
Attorney General

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