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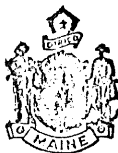
Elections; Residency, Congressional Candidates

JOSEPH E. BRENNAN
ATTORNEY GENERAL




RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

April 14, 1977

Representative Elizabeth H. Mitchell
Committee on Election Laws
State House
Augusta, Maine 04333

Dear Representative Mitchell:

This is in response to your request for an opinion, dated March 30, 1977. You have asked whether the State of Maine can constitutionally require that a candidate for Congressional office be a voting resident of the electoral district which he seeks to represent, as of the date established for filing primary petitions in the year that election is sought.

Our opinion is that such a law would violate Article I, Section 2, Clause 2 of the Constitution of the United States. Article I, Section 2, Clause 2 declares that:

> "No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

This clause exhausts the qualifications for Congressional office; and a state cannot set additional qualifications for such office. Shub v. Simpson, 76 A.2d 332 (Md. 1950); app. dsm'd, 340 U.S. 881. Applying this constitutional tenet, a court has invalidated a state statute which required a Congressional candidate to be a resident of the district in which he sought election. Hellman v. Collier, 141 A.2d 908 (Md. 1958). These decisions make clear that, because a voter residency requirement constitutes an additional "qualification" for Congressional office, the State of Maine could not constitutionally impose such a requirement as a precondition to election to Congress.

The issue presented by your request, however, is whether a voter residency requirement can be imposed by the State of Maine as a precondition to participation in a party primary. Such a requirement would not operate to foreclose a candidate from Congressional office, for a candidate for Congressional office may avoid the necessity of a primary nomination by filing a nominating petition pursuant to 21 M.R.S.A. § 491 et. seq.

Nevertheless, the courts which have addressed the issue of "qualification" for nomination by primary have concluded the issue against the constitutionality of such requirements. In one instance, a court upheld a Congressional re-districting statute against a challenge that its effective date, post-dating the time for filing primary petitions, would prevent a candidate from designating the particular Congressional district from which he sought election, as required by law. The court reasoned that, because a candidate could not be constitutionally prohibited from filing a primary petition in any district of the state, the fact that the proper districts were not in existence as of the date of filing would not render the statute infirm, Exon v. Tiemann, 279 F. Supp. 609 (D.Neb 1968).

In the only other genuinely pertinent case we have found, the court struck down a series of related statutes which effectively imposed a two-year district residency requirement on a Congressional candidate filing a primary petition. Dillon v. Fiorina, 340 F. Supp. 729 (D.N.Mex. 1972). Of special note is that the body of statutes confronting the court also provided a means for qualifying for Congressional office other than by primary nomination N.M.S.A. §3-8-2.[1/]

The reasoning which underlay the holding in Dillon is that, where a state has by law made the primary system an integral part of the election process, state restrictions on the qualifications of candidates seeking nomination by primary for Congressional office are to be judged as if the restrictions were imposed upon the qualifications for the office itself. Given the factual situation confronting the court in Dillon, such reasoning applies, irrespective of the existence of alternative but more burdensome means of

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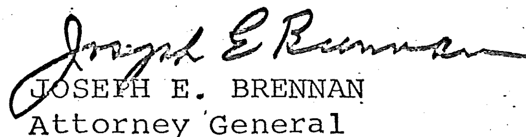
1/ On its face, the statute declared invalid by the court in Dillon purported to establish a qualification for election to office, and not merely participation in a primary. However, the court's opinion reveals that the court assumed that the qualification applied only to participation in a primary.

Qualifying for the ballot.[2]

By virtue of P.L. 1973, c. 414, §§ 14, 15, and 16, which amended 21 M.R.S.A. § 441 et seq. by extending that provision to primaries involving candidates for Congressional office, the State of Maine has by law made the primary system an "integral part" in the election of Congressional representatives. In fact, the history of Congressional elections in Maine, both before and after the 1973 amendment, indicates that nomination by party primary is almost a prerequisite to election to Congressional office. Therefore, a law which would impose a voter residency requirement as a precondition to entry in a Congressional primary in Maine is violative of Article I, Section 2, Clause 2 of the United States Constitution.

I hope this information is helpful.

Very truly yours,



JOSEPH E. BRENNAN
Attorney General

JEB:jg

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2/ It is arguable that the court in Dillon stretched the term "integral part" in citing the earlier Supreme Court cases which inaugurated the doctrine. United States v. Classic, 313 U.S. 299 (1941); Smith v. Allwright, 321 U.S. 649 (1944). There is, however, no authority to the contrary of Dillon.