

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)

Private Investigator qualifications
32 M.R.S.A. 6056

DM

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

October 28, 1977

To: Sergeant Arthur Wood - Maine State Police
From: James Gregory Boulos, Jr. - Assistant Attorney General

QUESTION:

You asked whether the use of the conjunction "or" rather than "and" which appears in 32 M.R.S.A. 6056, P.L. 1977, c. 508, constitutes an error or inconsistency.

If it does, you asked further whether the word "or" should be interpreted as meaning "and" for the purpose of administering this section.

ANSWER:

The use of the conjunction "or" which appears in 32 M.R.S.A. 6056 constitutes an error or inconsistency and consequently is to interpreted as meaning "and" for the purpose of administering that section.

REASONS:

The section under consideration purports to regulate the applications of those wishing to become licensed as private investigators. It states, in pertinent part as follows:

The applicant, or if the applicant is a corporation, its resident manager, superintendent or official representative, shall be at least 18 years of age and of good moral character or shall have been regularly employed for at least one year as a full-time investigative assistant or for not less than one year as a detective doing investigating work, a member of an investigative service of the United States or a police officer of the State of Maine or any political subdivision thereof. . . 32 M.R.S.A. 6056, P.L. 1977, c. 508 (emphasis supplied).

Sergeant Arthur Wood

October 28, 1977

The predecessor to this section is found in 32 M.R.S.A. 3805 and differs in scope from the present legislation in that it also governed the applications of those desiring licenses to engage in the business of a watch, guard or patrol agency. Such a license was granted only upon a showing by the applicant that he met the statutory qualifications, that is, he was at least 18 years of age and was of good moral character. For those who desired a license to be a private detective, however, the statute required in addition to these qualifications that the applicant have worked for at least one year in the investigative or law enforcement fields.

Under the present section (6056) those who now desire a license to do private investigation need not satisfy all three of these requirements if the conjunction "or" is to be accorded its usual effect. Either such applicants must be 18 years of age and of good moral character or, regardless of their age or moral character, they must have held employment in the investigative or law enforcement fields for at least one year. Construing the statute in this manner would lead to an untenable result and consequently the use of the conjunction "or" must be disregarded:

In construing a statute the Court should avoid an interpretation which would lead to an absurd result even though it must disregard the strict letter of the statute. Cornwall Industries, Inc. v. Maine Department of Manpower Affairs, Employment Security Commission, 351 A. 2d 546, 553 (Me. 1976); Greaves v. Houlton Water Co., 59 A. 2d 217 (Me. 1948)

By statute, the conjunctions "and" as well as "or" are convertible "as the sense of a statute may require." 1 M.R.S.A. 71 (2). See W.S. Libby Co. v. Johnson, 94 A. 2d 907, 910 (Me. 1953). Consequently, the word "or" may be interpreted as being "and" in order to effectuate and not defeat the evident intent of the legislature. Marshall v. State, 72 A. 2d 873 (Me. 1909). Such intent is ascertained, in part, by an examination of the statute's history. State v. Norton, 335 A. 2d 607, 613 n.3 (Me. 1975); Finks v. Maine State Highway Commission, 328 A.2d 791,797 (Me. 1974); Hayes v. State, 247 A. 2d 14 (1968). It is this examination which reveals no intent to diminish in any way the criteria which must be satisfied by those who seek to engage in the business of private investigation. The purpose of the legislative revision was twofold: to create a new section within the same title to deal exclusively with the licensing of private investigators; and to remove the Chief of the State Police from any involvement in the application process.¹

It cannot reasonably be argued that the legislature also intended to change the requirements which heretofore existed for the issuance of a license to engage in private investigation. To adopt such a position would inevitably lead to an "absurd result": those who are at least 18 years of age and of good moral character may be licensed; those who are not 18 years of age or those who are not of good moral character may be licensed simply because they have the work experience which the statute requires.

Sergeant Arthur Wood

October 28, 1977

The use of the conjunction "or" was inadvertent. Consequently, in-order to "effectuate the intent of the legislature, not its oversights" Canning v. State Department of Transportation, 347 A. 2d 605, 608 (Me. 1975), the word "or" is to be interpreted as meaning "and" for the purpose of administering 32 M.R.S.A. 6056.

1

The Commissioner of Public Safety is now charged with the processing of such applications and must review the same to assure compliance with the statutory provisions. 32 M.R.S.A. 6056