

MAINE STATE LEGISLATURE

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Elections: Residence
House of Representatives - per law for election
M. Const art IV pt. 1 Sec. 4
21 M.R.S.A. 443

D. ✓

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February 1, 1978

Honorable J. P. Marcel Lizotte
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Lizotte:

We are responding to your oral request for advice from this office on a question relating to election districts. It is our understanding that your question results from the redistricting which has taken place pursuant to Article IV, Part One, Sections 2 and 3 of the Constitution of Maine. This redistricting has had the result that your place of residence is located in one representative district while your place of business is located in another district. You have asked what steps you should take to insure that you may run for office as a State Representative in the latter district.

The qualifications for membership in the House of Representatives are constitutionally controlled. Article IV, Part One, Section 4, states, in pertinent part,

"No person shall be a member of the House of Representatives, unless he shall, . . . 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 clear from the foregoing that the question is whether a Representative is a legitimate and bona fide resident of the district which he represents. Some guidance in determining what constitutes residence may be found in 21 M.R.S.A. § 242, which contains the provisions for determining voting residence. Subsection 1 of that section defines residence as, "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." Subsection 2 concerning

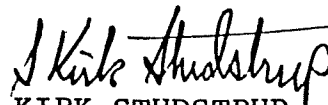
change of residence states, "A change of residence is made only by the act of removal, joined with the intent to remain in another place. There can only be one residence."

Certain general conclusions can be drawn from the foregoing constitutional and statutory provisions. These are:

1. A Representative must be a resident of his district for at least three months prior to his election.^{1/}
2. The residence of a Representative would be determined by a combination of where the individual actually lives and where he intends his residence to be. Certain traditional factual indicia of residence would be helpful in making this determination.
3. If it is necessary for a candidate to change his residence in order to meet the constitutional requirement, such change can be accomplished by the act of physically moving to the new district, together with a manifest intent to remain a resident in that district. Since you have indicated that your present residence is not in the district you wish to represent, it will be necessary for you to change your place of residence in this manner.

We hope the foregoing information is helpful in answering your question. We should add that the ultimate authority to determine the qualifications of any legislator resides with the respective House. Article IV, Part Third, Section 3, Constitution of Maine. Therefore, this office cannot guarantee a decision of where your place of residence is located for election purposes.

Sincerely, .



S. KIRK STUDSTRUP
Assistant Attorney General

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^{1/} The election referred to is the general election in November. In 1971 the Legislature specifically exempted candidates for the House of Representatives and the Senate from the pre-primary election residence requirement set forth in 21 M.R.S.A. § 443, on the basis that the requirement was unconstitutional for such candidates. L.D. 259 as enacted by P.L. 1971, c. 41.