

# MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333

March 22, 1979

Honorable Nancy Payne  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Payne:

By letter of February 22, 1979, you requested an opinion on the constitutionality of L.D. 661, which would amend 21 M.R.S.A. § 443 to apply to candidates for state office.<sup>1/</sup> As amended, § 443 would read:

"§ 443. Qualification for state and county office.

A candidate for the office of Presidential Elector or for any state or<sup>2/</sup> county office must be a resident of and a voter in the electoral division he seeks to represent on the date established for filing primary petitions in the year he seeks election and must maintain this voting residence during his term of office."

The constitutional question arises with respect to the application of § 443 as amended to candidates for the offices of Representative and Senator. The relevant provisions of the Maine Constitution are art. IV, pt. 1, § 4 and art. IV, pt. 2, § 6. These provisions set forth the qualifications for Representative and Senator:

"SECTION 4. 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."

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<sup>1/</sup> § 443 appears in c. 15 of Title 21, which governs nomination by primary election.

<sup>2/</sup> The L.D. 661 amendment would add the underlined language.

"SECTION 6. 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."

If L.D. 661 were enacted, § 443 would then require a candidate for Representative or Senator to, "on the date established for filing primary petitions," be a resident of the district he seeks to represent. The date for filing primary petitions is established by 21 M.R.S.A. § 445(8) as "on or before . . . April 1st of the election year in which it is to be used." As April is seven months prior to the November election, § 443, if so amended, would impose a residency requirement additional to the constitutional requirement that a member of the House or Senate shall have been a resident of his district "for the three months next preceding the time of his election." The imposition of such a requirement is beyond the authority of the Legislature, as the Constitutional requirement is exhaustive of the subject and may not be added to, detracted from or altered by legislative act.<sup>3/</sup> People v. McCormick, 103 N.E. 1053 (Ill. 1913); Dickson v. Strickland, 265 S.W. 1012 (Tex. 1924); Thomas v. State, 58 So.2d 173 (Fla. 1952). See also Opinion of the Justices, 137 Me. 350, 19 A.2d 53 (1941).

You have also inquired whether an amendment identical to that proposed by L.D. 661, if made to 21 M.R.S.A. § 492,<sup>4/</sup> would also be unconstitutional. So amended, 21 M.R.S.A. § 492 would presumably read:<sup>5/</sup>

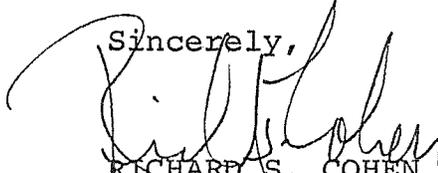
"A candidate for the office of Presidential Elector or for any state or county office must be a resident of and a voter in the electoral division he seeks to represent on the date established for filing nomination petitions in the year he seeks election and must maintain this voting residence during his term of office."

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- 3/ The Legislature appears to have been aware of this rule when, in 1971, it amended § 443 which then applied to candidates for state office, to except candidates for the House and Senate. P.L. 1971, c. 41. The statement of fact notes the constitutional problem, L.D. 259, 105th Legislature, copy attached. There was no legislative debate. See also Opinion of the Attorney General of Maine to Representative Lizotte dated February 1, 1978, copy attached.
- 4/ § 492 appears in c. 17 of Title 21, which governs nomination by petition.
- 5/ No. L.D. or draft amendment of § 492 was submitted with your letter. We have imported the language of L.D. 661 in considering the effect of "an identical amendment" to § 492.

The date for filing nomination petitions is established by 21 M.R.S.A. § 494(9) as "the date of the primary election in the election year in which it is to be used." The date of the primary election is set by 21 M.R.S.A. § 448 as "the 2nd Tuesday of June of each general election year." As June is five months prior to the November election, the described amendment to § 492 would present the same constitutional conflict.

If we can be of further assistance, please feel free to call on us.

Sincerely,



RICHARD S. COHEN  
Attorney General

RSC/ec

cc: Senator Richard Pierce  
Representative Sharon Benoit  
Chairpersons, Committee on Elections