

# MAINE STATE LEGISLATURE

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

December 18, 1979

Honorable William J. Garsoe  
70 Blanchard Road  
Cumberland, Maine 04021

Dear Representative Garsoe:

This is in response to your inquiry as to whether a person is qualified to represent a House District in which his habitation is not fixed.<sup>1/</sup> We answer in the negative.

At the outset, it should be noted that the Constitution declares at art. IV, pt. 3rd, § 3, that "each House shall be the judge of the election and qualifications of its own members." Further, this power is exclusive and plenary. Lund ex rel. Wilbur v. Pratt, 308 A.2d 554, 560 (Me. 1973); Opinion of the Justices, 157 Me. 98, 170 A.2d 657 (1961); Opinion of the Justices, 143 Me. 417, 88 A.2d 151 (1948).

Once this has been stated, however, it should also be noted that art. IV, pt. 1st, § 4 controls the qualifications for membership in the House of Representatives. That section provides, in pertinent part:

No person shall be a member of the House of Representatives, unless he . . . for the three months next preceding the time of his election shall have been, . . . a resident in the town or district which he represents.

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<sup>1/</sup> We understand that your question concerns J. P. Marcel Lizotte, the apparent winner of a special election held on November 6, 1979, to fill the vacancy in House District 115-2. Without knowledge of all the relevant facts, we cannot render a definitive opinion with respect to any particular candidate, but we can set out the legal principles applicable to determining residence under the Constitution.

It is axiomatic that where the Constitution prescribes specific eligibility requirements for a particular constitutional office, these requirements are exclusive and the Legislature (except where expressly authorized to do so) has no power to require different qualifications. See 34 A.L.R.2d 155; Re Opinion of the Justices, 165 Mass. 599, 43 N.E. 927 (1896). Compliance with constitutional residence requirements for qualification for public office is mandatory. Eastmore v. Stone, 265 So.2d 517, 520 (Fla. 1972); 67 C.J.S. "Officer" § 16, n. 41 and § 26, n. 80. Thus, while the House is the judge of the qualifications of its members, it must make the judgment in accordance with the dictates of art. IV, pt. 1st, § 4 of the Maine Constitution.

In light of the constitutional requirements, the question arises as to what constitutes legitimate and bona fide residence. Prior opinions of this office have consistently taken the position that the establishment of a bona fide residence sufficient to entitle a person to vote in a particular district is sufficient to qualify the person to represent that district in the House of Representatives. See Opinions of the Attorney General, September 12, 1978, September 1, 1978, and February 1, 1978. This position is supported by the fact that the Constitution uses the term "residence" in a similar manner in prescribing the qualifications both for electors and for members of the House. It thus seems clear that the framers of the Constitution intended that a member of the House have at least as much connection with the place he represents as is required for a voter.<sup>2/</sup>

Given the above conclusion, it is necessary to look to the definition of "residence" which the Legislature has created for purposes of voter registration. Title 21 M.R.S.A. § 242 provides as follows: "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." (emphasis added) The election laws also dictate how a change of residence may be effected: "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." 21 M.R.S.A. § 242(2). (emphasis added) These, then, are the standards against which residence should be judged.

It should be noted, in this regard, that in 1978 then-Representative Lizotte sought the opinion of the Attorney General as to what steps he should take to change his residence so that he could continue to represent House District 115-2, in which, due to redistricting, he was no longer a resident. That opinion, issued February 1, 1978, stated:

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<sup>2/</sup> In fact, the nexus for a Representative must be even greater, since the Constitution requires that he, unlike the voter, reside in the district "for the three months next preceding the time of his election." Compare art. IV, pt. 1st, § 4 (qualifications for membership in the House) with art. II, § 1 (qualifications for electors).

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. (emphasis added)

The above statement continues to represent our view of the steps which must be taken to comply with the constitutionally mandated residence requirement.

You have also asked whether registration to vote in a particular district conclusively establishes that person's residence in the district for purposes of qualifying to serve in the House of Representatives.<sup>3/</sup> Our answer is that the act of registering does not, in and of itself, establish residence.

As we stated in a prior opinion, residence is generally determined by examining a number of factors, including the address at which the person lives, the address at which his or her family resides, and the address used on official documents, such as motor vehicle registration, driver's license, hunting and fishing licenses and tax forms.

The fact of voting in a town, while of importance as bearing on the question of settlement, is by no means conclusive.

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It is obvious that the fact of voting in a place is not and cannot be conclusive of the fact of residence.

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3/ While we have concluded that "residence" for purposes of serving in the House may be deemed to have the same meaning as "residence" for purposes of registering to vote, this question raises a different issue. In essence, this inquiry is of an evidentiary nature, in that it concerns the weight to be given the place of voting registration in deciding whether a person satisfies the constitutional test of residence required for membership in the House.

It is simply a fact, with the facts in the case, to be weighed. . . .

East Livermore v. Farmington,  
74 Me. 154, 155-156 (1882)<sup>4/</sup>

In short, residence is to be ascertained by reference to a variety of objective criteria.<sup>5/</sup> Similarly, a change of residence involves a significant shifting from a previous address to a new address.

There is another compelling reason why, in the situation at issue here, the mere act of registering to vote in a particular location cannot be deemed to dispose of the question of residence. The Maine Constitution vests in the House the duty to judge the election and qualifications of its members. If the House were to accept registering to vote in a given place as finally dispositive of residence for purposes of holding office, it would be abdicating its constitutional responsibility. While, as explained above, the place where a person is registered to vote may be treated as one factor, the House must ultimately determine that the district which the person purports to represent is in fact the "place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return." If it determines that this is not the case, then the person is not qualified to represent the district, notwithstanding the fact that he may be registered to vote there.<sup>6/</sup>

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<sup>4/</sup> This ruling has been followed in later cases, see, e.g., Connolly v. Scrunician, 138 Me. 80 (1941); Somerville v. Smithfield, 126 Me. 511 (1928); Ellsworth v. Waltham, 125 Me. 214 (1926); and Rumford v. Upton, 113 Me. 543 (1915). See also 107 A.L.R. 448.

<sup>5/</sup> Although intent is an aspect of the test of residence, it clearly does not suffice alone.

One's intention to locate at a particular place does not become effective to establish his residence there until he is physically present at such place. (citations omitted) 'To acquire a domicile of choice in a place, a person must be physically present there, and the residence at the place chosen must be actual.' Snyder v. Boulware, 109 Mont. 427, 96 P.2d 913, 915 (1959).

<sup>6/</sup> When the inquiry concerns the person's qualifications at the time of election, the question might be more appropriately stated as follows: was the district the place in which, for the three months preceding the election, the person's habitation was fixed and to which, whenever he was absent, he had the intention to return?

Hon. William Garsoe  
Page 5

If you have further questions in this matter, please feel free to contact this office.

Very truly yours,

RICHARD S. COHEN  
Attorney General

RSC/ec

QUINNAN  
ATTORNEY GENERAL

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JOHN M. R. PATERSON  
DONALD G. ALEXANDER  
DEPUTY ATTORNEYS GENERAL

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

September 1, 1978

Honorable Rodney Quinn  
Office of the Majority Leader  
State House  
Augusta, Maine 04333

Dear Representative Quinn:

This responds to your request for advice regarding residency requirements for Representatives to the Legislature.

The Maine Constitution establishes the residency requirements for members of the House of Representatives at Article IV, Part First, Section 4. That section basically provides that a person cannot be a member of the House of Representatives unless the person is 21 years of age, has been a citizen of the United States for 5 years, a resident of Maine for 1 year, and a resident of the district that person seeks to represent for at least 3 months prior to the date of the election. Further, a person, once elected, must continue to be a resident of the district from which that person is elected in order to continue to be qualified to be a member of the House of Representatives.

Deciding what is a person's residence is not, unfortunately, an exact science. Rather, it is a combination of determination of facts and the person's intent. Thus, the election laws define "residence" as: "that place in which a person's habitation is fixed and to which that person, whenever absent, has the intention to return." 21 M.R.S.A. § 1-35.

Residency may be determined by various attributes, including the place where a person is living, the address on a person's driving license or auto registration, addresses on tax forms and/or payment of taxes, or addresses on other official forms. See, for example, the criteria used in the fish and game laws, 12 M.R.S.A. § 1901-14-A.

For purposes of voter registration and thus qualification for election to membership in the House of Representatives a person might need to demonstrate some, but not all, of the attributes of residence, such as those suggested above. Further, as indicated in the election laws, intent does play a role in determinations for election law and office qualification purposes.

Should any dispute develop regarding the residency of a person who is elected to office, the House of Representatives would be the ultimate judge of that dispute. Article IV, Part Third, Section 3 of the Constitution provides that:

"Each House shall be the judge of the elections and qualifications of its own members. . . . "

I hope this information is helpful. If you need further advice on this matter, I will try to provide it.

Sincerely,



DONALD G. ALEXANDER  
Deputy Attorney General

DA/ec



HOUSE OF REPRESENTATIVES - CHANGE OF RESIDENCE  
ME. CONST. ART 4 PT 1, § 4

ATTORNEY GENERAL



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

September 12, 1978

Honorable John L. Martin  
Speaker of the House  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Mr. Speaker:

This responds to your request for an opinion on the effect of a member of the House of Representatives change of residence on that persons status as a House member.

FACTS:

A Representative elected to an at-large seat representing one Maine city has moved to another Maine city. Further, the Representative has registered to vote in the second city. The city in which the Representative was originally elected and the city in which the Representative is currently registered to vote are not part of the same representative district.

QUESTION:

Based on the above facts, you ask whether the Representative in question is properly a member of the Maine House of Representatives.

DISCUSSION:

Response to your question requires an analysis of Article IV, Part First of the Maine Constitution. That section provides:

"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." (emphasis added)

Thus, the Maine Constitution requires that a person elected to represent a district must remain a resident of the district from which that person is elected in order to remain qualified to be a representative from that district.

In this case, the person has moved to another district and registered to vote there. In registering to vote that person signed an oath indicating that the other city was that person's residence. Upon making that determination, the person no longer resided in the district from which she was elected and the seat automatically became vacant.

Maine law, 21 M.R.S.A. § 242, specifies the law regarding residency. This provision of law articulates the well-established principle that there can only be one residence at one time. 21 M.R.S.A. § 242-2. When the person took up residence in another city, therefore, the person vacated the residence in the first city and residence in the district from which that person was elected.

Sincerely,

  
DONALD G. ALEXANDER  
Deputy Attorney General

DGA:mfe

cc: Representative Linwood Palmer  
William Garside, Legislative Administrative Director

*Elections: Residence  
House of Representatives - for election  
Mr. [unclear] [unclear] 10 Pt. 1 Sec. 4  
21 M.R.S.A. 443*

JOSEPH E. BRENNAN  
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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

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

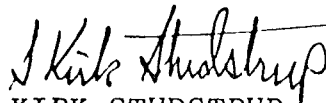
change of residence states, "A change of residence is made only by the act of removal, joined with the intent to remain in another place. There can only be one residence."

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.<sup>1/</sup>
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

SKS:mfe

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<sup>1/</sup> 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.