

# MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

May 16, 1980

Honorable Merle Nelson  
71 Carrol Street  
Portland, Maine 04102

Dear Representative Nelson:

You have requested that this office render an opinion regarding the definition of the term "residing" as it is used in 37-A M.R.S.A. § 29. We conclude that the term "residing," as employed in that statute, signifies the legal concept of domicile, which means living in a given place with intent to remain there and, when absent, having an intent to return. See Belanger v. Belanger, 240 A.2d 743 (Me. 1968); Connolly v. Serunian, 138 Me. 80 (1941); Gilmartin v. Emery, 131 Me. 236 (1932).

The relevant statutory language reads as follows:

Aid shall be granted . . . to the needy spouse, child or parent or parents, . . . of a veteran, who if living, is disabled and a resident of the State . . . . Such aid shall not be forfeited by reason of temporary absence from the State.

37-A M.R.S.A. § 29:

Since there is no legislative history, we must discern the legislative intent underlying this statute from its specific language and the relevant case law.

In determining the meaning of the term "resident," there appears to be a choice between two concepts. Some courts have interpreted residence quite literally as denoting the present place of physical abode without reference to permanence. See, e.g., Hunt v. Hunt, 280 So.2d 63 (Fla. App. 1973) (residence denotes place of abode whether permanent or temporary); In re Riley's Will, 266 N.Y.S. 209

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1/ The concept of residence is applied to two different classes of persons under § 29: the disabled veteran and the veteran's dependents who are eligible for aid under that section. We understand that your request relates to the meaning of residency for the veteran.

(Surrogate's Ct. 1933) ("Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home.") 266 N.Y.S. at 212. (citation omitted). More often, however, especially in Maine, where no pure physical presence cases could be found, the courts have interpreted residency requirements to mean domicile. In Belanger v. Belanger, *supra*, the Maine Supreme Judicial Court interpreted the word "residence" in a divorce jurisdictional statute to imply the concept of domicile on the ground that the State's strong interest in divorce proceedings requires more than mere transient residence in the State. 240 A.2d at 746. The same rationale was used in Sherman v. Collin, 117 F.Supp. 496 (D. Me. 1953), where the term "resides" in a federal jurisdictional statute was interpreted to mean domicile on the theory that the concept of residence in jurisdictional statutes implies more than physical presence. 117 F.Supp. at 497. Finally, in Gilmartin v. Emery, *supra*, the Maine Court interpreted the term "inhabitants," as meaning domiciliaries. Thus, it appears to be the rule in Maine that the concept of residence conveys some sense of permanency and is generally read as implying the legal concept of domicile. See Farand v. Redington Memorial Home, 270 A.2d 871 (Me. 1970).

It would therefore appear that the term "residence" in a Maine statute ought ordinarily to be read as "domicile" in the absence of strong evidence of legislative intent to the contrary. It further appears from the cases discussed that the Legislature employs that concept of residence in statutes where a strong state interest in the given area exists.

In the present case, we find such an interest in the protection of the public fisc. By authorizing aid to dependents of disabled veterans who are residents of the State, it seems evident that the Legislature intended to limit the outlay of such funds to those with some permanent connection with the State and intended to deny aid to dependents of those veterans who, while physically present in the State, do not intend to remain. Internal evidence of the intent that residence means domicile can be found in the language stating that such aid is not forfeited when the veteran is only temporarily absent from the State. The implication is that aid will be unavailable where presence in the State is temporary. Finally, this construction of the statute is supported by the interpretation given by the administering agency which interpretation, in the absence of contrary statutory history, is entitled to deference. E.g., Kelley v. Halperin, 390 A.2d 1078 (Me. 1978). The Bureau of Veterans Services rules regarding this provision embrace the concept of domicile. See Bureau of Veterans Services Rules, § 3.03.

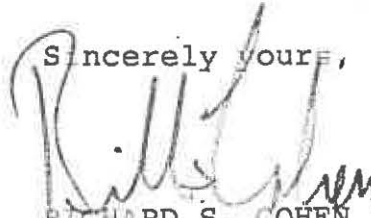
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2/ Indeed, a conclusion contrary to the one we reach herein might permit persons to receive aid who were present in Maine for that reason alone. We do not think that such a result was contemplated by the Legislature when it enacted this law.

In light of the prevailing case law, the strong state interest at issue in the statute, the language of the statute and the supporting interpretation of the administering agency, we conclude that the word "resident" as used in 37-A M.R.S.A. § 29 means domicile.

We hope this opinion addresses the concerns voiced in your request. If you have any further questions, please feel free to contact this office.

Sincerely yours,



RICHARD S. COHEN  
Attorney General

RSC:jg  
cc: John Selser  
Chris Holden