

MAINE STATE LEGISLATURE

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June 6, 1980

Honorable Joseph E. Brennan
Governor of Maine
State House
Augusta, Maine 04333

Dear Governor Brennan:

You have requested an opinion from this office on the issue of whether the Chief Judge of the District Court may assign a judge to a district to which that judge has removed his residence, either temporarily or permanently, when the judge was originally appointed to another district. We would answer the question in the negative.

The statutory scheme regulating the appointment of judges of the District Court is found in 4 M.R.S.A. § 157, which requires that judges not appointed at large be residents of the district to which they are appointed. The language of the statute clearly contemplates that each district will have at least one judge who shall be a resident of that district. This distribution of judges through the districts is accomplished through the appointment process. It is our understanding that the ordinary practice is to designate in the commission the district to which the judge is appointed. Thus it appears from the language of the statute and the practice thereunder that the original assignment of district court judges is accomplished through the appointment process and therefore is a gubernatorial power.

The powers of the Chief Judge of the District Court to assign judges to the various districts is far more limited. Section 104 of Title 4 states as follows:

. . . [T]he Chief Judge shall:

* * * *

(5) Assign judges. Assign a judge to hold court for a temporary period in a district or division outside of his own district where, in his sole judgment, they are needed; [emphasis added]

4 M.R.S.A. § 164(5).

Like the language controlling the appointment of district judges, this language has remained substantially the same since the enactment of the original law creating the District Court. P.L. 1961, c. 386.^{1/} Again, we think the statute clear on its face as to the limited powers of the Chief Judge to assign judges. The terms of § 164(5) dictate that the authority of the Chief Judge to assign judges outside of their appointive districts is limited to a "temporary period" and must be related to the need of the court in terms of the caseloads in the various districts and other factors such as judges' illness or vacations. The legislative history of the original enactment is of no help on this issue, but the debate related to the 1977 amendment supports the above interpretation. Remarking on the powers of the Chief

^{1/} Section 164(5) was amended in 1977 to add the language "where, in his sole judgment, they are needed." P.L. 1977, c. 544. The evident purpose of this amendment, in light of the legislative debate upon it, was to make clear the lines of authority as between the Chief Judge and the Court Administrator on the issue of the assignment of at large judges and the temporary assignment of judges appointed to specific districts. See, e.g., II Me. Leg. Rec. 2014 (1977) (remarks of Sen. Collins). Hence, the amendment does not bear upon the question discussed in this opinion. It should be noted that the debate does acknowledge that permanently assigned judges only sit in other divisions or districts "occasionally." Id.

Judge to assign permanently appointed district judges, Senator Collins stated:

This [the Chief Judge's power as distinguished from that of the Court Administrator] applies not only to the judges at large, but to judges who occasionally are assigned to a different district than their own when there is illness or vacation or similar problems when some shuffling is required.

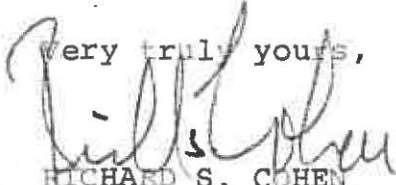
II Me. Leg. Rec. 2014 (1977)

The Legislature apparently understood the powers of the Chief Judge to assign judges appointed to specific districts to be limited in terms of both time and purpose. Finally, it is helpful to compare the Chief Judge's broad power to assign judges at large, 4 M.R.S.A. § 165(2), to his power to assign permanently situated judges. His power as to judges at large is clearly set out in the statute and is clearly of a broader scope than his authority to assign judges appointed to a district.

The distinction between the Governor's power to appoint district judges to a given district at the time of their original appointment and the Chief Judge's power to assign those judges temporarily is clear. We would therefore conclude that the Chief Judge is without power to assign a judge appointed to one district to another permanently, and also may not assign a judge to a different district for the sole reason that that judge has removed his residence thereto,^{2/} whether temporarily or permanently. To allow the Chief Judge to exercise such powers would not only be beyond the limits prescribed by statute but would erode the powers of the Governor.

We hope this opinion has addressed your concerns. If we can be of further aid, do not hesitate to contact us.

Very truly yours,


RICHARD S. COHEN
Attorney General

RSC:mfe

^{2/} We have not addressed the question of whether a permanent removal on the part of a district judge from his district would negate his appointment, but there is some authority indicating it would where the requirement of residence in one's assigned district is statutory. See generally, ANNOT., 88 A.L.R. 812, 828.