

**OPINION
70-172**

January 26, 1970 (OPINION)

Mr. Russell W. Stuart
Commissioner
North Dakota Game and Fish Department

RE: Game and Fish - Licenses - Nonresident Students

This is in reply to your letter of January 20, 1970, in which you ask the following questions:

I will appreciate very much your written opinion on qualification of residence for the purpose of buying a resident North Dakota hunting or fishing license as it pertains to students in our North Dakota Colleges and Universities who are paying a Non-Resident tuition fee."

The definition of a nonresident for tuition purposes is governed by section 15-10-19 of the North Dakota Century Code, as amended. This is a special statute which defines a nonresident for tuition purposes only. While it may have some correlation to the general rules governing residency it is not decisive of the question of residency for purposes other than determining whether a student attending a State institution of higher learning is required to pay nonresident tuition fees.

Insofar as resident hunting or fishing licenses are concerned, this matter is governed by a special statute also. Thus section 20-03-03 of the North Dakota Century Code provides:

APPLICATION FOR RESIDENT HUNTING, TRAPPING, OR FISHING LICENSE - CONTENTS. Each application for a resident hunting, trapping, or fishing license shall be signed by the applicant and shall state:

1. That the applicant has been a bona fide resident of the state for at least six months;
2. The applicant's resident and post-office and street address; and
3. The applicant's weight, height, color of hair, and color of eyes."

It would appear from this provision, that a person need only have been a bona fide resident of the State of North Dakota for six months prior to obtaining a resident hunting or fishing license. Section 15-10-19, defining a nonresident student for tuition purposes, requires that a person or his parents or guardian (depending upon the age of the person) have resided within the State for a period of twelve months prior to the date of registration in order to qualify as a resident student. It is obvious that a person who has lived in the State for six months but less than twelve months would be

eligible for a resident hunting or fishing license but would not be eligible for classification as a resident student. By the same token, military personnel assigned to a military installation in North Dakota and their dependents, dependents of instructors who live in this State and teach in any institution of higher learning are, by the provisions of section 15-10-19, classified as residents of this State for tuition purposes but may be nonresidents for purposes of obtaining a resident hunting or fishing license. We use this situation only as an example since we are aware of the provisions of section 20-03-05 of the North Dakota Century Code permitting the Commissioner to issue resident licenses to military personnel under the conditions therein set forth.

While the fact a person is classified as a nonresident student for tuition purposes under the provisions of section 15-10-19 may alert the Game and Fish Department to the fact a person may also be a nonresident for the purposes of obtaining a resident hunting or fishing license, we do not believe it may be used as presumptive evidence of that fact since, as noted above, the two statutes with which we are concerned are special statutes and only purport to govern those areas to which they specifically apply, i.e., nonresident tuition and resident game and fish licenses.

If the fact a student were classified as a nonresident for tuition purposes were to be used as a presumption the person was not entitled to a resident hunting or fishing license such student, in attempting to acquire a resident hunting or fishing license, would bear a greater burden of proof and we do not believe same is justified by the statutes. In addition we would note such presumption would tend to work an injustice with regard to those students attending State institutions of higher learning and those attending State institutions of higher learning. As we understand, students attending private institutions of higher learning pay a specified amount of tuition, regardless of whether they are residents of North Dakota or other States. There is no legal or statutory classification of nonresident students in private institutions. Therefore there would be no presumption of nonresidency with regard to such students while students who attend a State institution of higher learning, because of the statutory definition of nonresident students, would be under an obligation to overcome the presumption of non-residency.

By the same token, the presence in the State of a person who is attending an institution of higher learning, public or private, does not necessarily mean such person is a resident of the State for the purposes of obtaining a resident hunting or fishing license. Residence for purposes of obtaining a resident hunting or fishing license must be determined independently of the person's status at an institution of higher learning within the State.

In summary, it is our opinion the fact a student is classified as a nonresident student for purposes of attendance at a State institution of higher learning cannot be considered as conclusive or presumptive proof that such student is a nonresident for the purposes of acquiring a resident hunting or fishing license.

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