

OPINION  
74-356

January 24, 1974 (OPINION)

Mr. Russell W. Stuart  
Commissioner  
North Dakota Game and Fish  
Department  
Bismarck, ND 58501

Dear Mr. Stuart:

This is in reply to your letter of January 14, 1974, with regard to a particular resident hunting license application.

You enclose a photocopy of a letter from a named individual stating circumstances and asking a question. You ask whether taking into consideration the language of section 20.1-01-02, subsection 4, of the North Dakota Century Code, is this individual eligible to be classified as a resident hunter in North Dakota.

You ask further: "Would the fact that a person is voluntarily making a career of military service have a bearing on his eligibility to be a resident hunter, as opposed to a person fulfilling a statutory military obligation?"

The enclosure indicates that the applicant is a Captain in the U. S. Army and presently on active duty. He states that his current duty station is Omaha, Nebraska, and that he is attending the University of Nebraska at Omaha under the Army's "Bootstrap" Program.

The letter states that the individual was born at Linton, North Dakota, and has always been a resident of North Dakota. It states that he entered active duty at Fargo, North Dakota, March of 1967. It states that he has never changed his legal residency during his entire Army career and that he still claims residency and votes in North Dakota.

He states that since he is military and stationed in Nebraska he is eligible for a Nebraska resident big game license without claiming residency in Nebraska.

It states that his intent for the 1974 big game hunting season is to purchase a Nebraska license and do some hunting in that state. It states he also intends to take a few days of leave and return to North Dakota and hunt deer with his father and relatives.

Section 37-214.01 Revised Statutes of Nebraska 1943, 1967 Cumulative Supplement provides:

"37-214.01. Hunting, fishing or trapping permit; person stationed in Nebraska in military service; college student; resident permit.

1. Any person in the military service of the United States,

regardless of residence, who has been ordered to active duty at any facility of the Department of Defense or its component services located in the State of Nebraska, may hunt, fish, or trap on the appropriate resident permit upon satisfactory proof that such person has been actually present for duty at such facility for a period of thirty days or more.

2. \* \* \* "

While section 37-214-01 has been frequently revised, prior to 1967 and there may have been subsequent revisions, the above is the latest version of same we have been able to locate, and seems to accord with the individual's conclusion as to the Nebraska law.

Subsection 4 of section 20.1-01-02 of the 1973 Supplement to the North Dakota Century Code states:

"20.1-01-02. DEFINITIONS. In this title, unless the context or subject matter otherwise requires:

\* \* \*

4. 'Resident' means any person who has actually lived within this state or maintained his home therein for at least six months immediately preceding the date that residence is to be determined. A 'nonresident' is any person who has not done so."

Construction of the North Dakota statutory language is not without difficulty. We would assume that the use of the term "lived" in the first alternative provision, would refer to actual physical presence in the state, though we doubt that it could be so strictly construed as to contend that a person claiming to be "living" in the State of North Dakota could not step across the North Dakota boundary line at any time less than six months prior to his application for resident hunting license. While the applicant does not state whether or not he has been physically present in the state during the last six months, as he is apparently attempting to convince you of his eligibility for licensure, and does not state he has been physically present in the state, we will at least tentatively assume that he has not been present in the state at any time for the last six months and therefore is not entitled to be considered a resident under the first alternative presented in the statute.

The second alternative in the North Dakota statutory provision refers to his "home". We find almost half a page of definitions and synonyms for the word "home" in "Webster's New 20th Century Dictionary, unabridged 2nd. Edition" and similar quantities of material in other dictionaries. Thus, it can be a house, in some circumstances, but does not have to be, and could include a lesser area or a greater area. Generally, it does appear to be proper in appropriate circumstances to consider it practically synonymous with the term "domicile" and "residence".

In legal theory a person in the military forces is required to be physically present where his military orders designate. While it is

conceivable, particularly in the "New" Army that he may exert a great deal of influence as to where his military orders require him to be, it is such orders, not his own intentions, that determine the location of his physical presence. On such basis, while he may intend to make his home where his military orders require him to be, he also may determine to maintain his home or residence elsewhere. The individual here in question has stated quite definitely that he has never changed his intent to maintain North Dakota as his residence. Looking to the provisions of section 54-01-26, subsections 1 and 2 of the North Dakota Century Code, he is presently physically present in Omaha, Nebraska, for special or temporary purpose, as designated on his military orders, and he has never had the necessary union of act and intent to change his residence, home or domicile from North Dakota.

We would readily recognize that a career soldier has subjected himself to the situation where he no longer has control of the location of his physical presence by reason of subjection to military orders, however, there is no legal precedent for the proposition that even a career soldier by reason of the intent to remain in the armed services has formulated the necessary intent to change his residence. In some statutes and for some purposes, persons in the armed services and particularly those making a career of such service have been excepted from the usual rules in this respect, however, we find no such provision in the general statute, section 54-01-26 or in the particular statute here concerned subsection 4 of section 20.1-01-02 of the 1973 Supplement to the North Dakota Century Code.

While obtaining a "resident" hunting license is normally predicated upon the applicant's declaring himself to be a resident of the state issuing the license, and therefore evidences the necessary union of act and intent to change his residence, we find no such declaration in the Nebraska statute. In fact, the Nebraska statute specifically states: "regardless of residence."

On such basis, to the extent of the information submitted to you and to us, we necessarily have to conclude that the individual in question is entitled to a North Dakota resident deer hunting license.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely yours,

Allen I. Olson

Attorney General