

**OPINION  
48-78**

September 18, 1948            (OPINION)

GAME AND FISH

RE: License for Members of Armed Forces

I am in receipt of your letter dated September 9, 1948, requesting an opinion from this office on the provisions of section 20-0305 of the 1943 Revised Code, as amended by chapter 184 of the 1945 Session Laws. I also note the letter directed to your office by Odin J. Wold, county auditor of Richland County.

In Mr. Wold's letter it is stated:

"I would appreciate it if you would let me know if a member of the United States armed forces, and a resident of North Dakota, can hunt or fish without a license. Also, if a nonresident member of the armed forces can hunt on a North Dakota resident license this year.\* \* \*"

The provisions of the statute with which we are concerned reads as follows:

"Any resident license prescribed by this title may be issued by, and in the discretion of, the commissioner \* \* \* to any person who is within the the state on furlough, or leave, or on temporary duty, \* \* \*.Any resident of the state, while in the military service of the United States, shall be permitted to hunt game birds or fish without a license therefor during the open season during the time of war. No license shall be issued under the provisions of this section unless a satisfactory affidavit of some bona fide resident setting forth the actual conditions accompanies the application."

It is the opinion of this office that a resident of this state who is in the armed forces would not need to secure or possess the regular hunting license for the reason that we are still in the time of war. I refer you to the case Ex parte Givins, 262 F. 702-705, wherein it was said:

"'Time of war' continues from the date of the declaration of war by Congress until some formal proclamation of peace by an authority competent to proclaim it." It has previously been ruled by this office that until there has been a formal proclamation of peace by our government we would still be in a time of war. This same ruling holds true at the present time as our government has not as yet concluded a treaty of peace with all of the nations with which we were in armed conflict.

It should next be pointed out that you, as the commissioner, are vested with the discretion in issuing licenses under the provisions of this section to members of the armed forces who are in the state on furlough, leave, or on temporary duty, and you need not issue a license to a nonresident who is a member of the armed forces unless a

bona fide resident executes a satisfactory affidavit setting forth the facts concerning the nonresident's presence in the state. It is apparently within your discretion to prohibit the issuance of a resident license to those who actually come into the state for the purpose of hunting. However, it is my personal opinion that the law should be construed and applied so as to effectuate the legislative intention which obviously was to assist, help, acknowledge, or even reward soldiers and sailors for their part in the defense of this country.

Lastly, I again wish to point out that the Legislature has granted you with the discretion of issuing or denying such licenses and, of course, you would be authorized to adopt such rules and regulations as you desire in placing the statute into effect.

P.O. SATHRE

Attorney General