

MEMORANDUM

State of Alaska Department of Law

TO: Kevin Duffy, Commissioner
Alaska Department of Fish and Game

DATE: July 31, 2003

FILE NO.: 661-03-0585

TEL. NO.: 269-5241

SUBJECT: Alaska Residency Status of
Transferred Military
Personnel for Hunting &
Fishing Licenses

FROM: Lance B. Nelson
Assistant Attorney General
Natural Resources Section - Anchorage

I. Question:

You have asked whether a member of the military who has established Alaska residency and is then transferred to a military assignment in another state loses his Alaska residency by obtaining a “resident” hunting or fishing license in the other state that is especially provided to members of the military without their meeting the general residency requirements for non-military people.

II. Short Answer:

While this issue has not been addressed by the courts in Alaska, it is our opinion that the answer will probably depend on the nature of the license obtained in the other state. If qualification for the other state’s license is based on a claim of residency in that state by the member of the military, then obtaining such a license would disqualify that person as an Alaska resident. But if the license is one given to all members of the military as an exception to the general residency requirements for civilians, Alaska courts might find that a benefit obtained under a “claim of residency” in the new state would not terminate the person’s Alaska residency. We recommend consultation with the Department of Law on a case-by-case basis to evaluate the law of the particular state in question.

III. Discussion:

Military personnel who are transferred to Alaska can obtain “resident” hunting and fishing licenses in two different ways. They can qualify as any other person who moves to Alaska by

maintaining their domicile in the state for the preceding 12 consecutive months and not claiming residency, or obtain benefits of residency, in another state. AS 16.05.940(26)(A).¹ This type of residency is indefinite and may be permanent if the qualifications continue to be met. In the alternative, military personnel may receive a “resident” license merely by being stationed in Alaska for 12 consecutive months without any intent to make Alaska their domicile, and in spite of their claiming domicile in another state. AS 16.05.940(26)(C).² This type of residency is temporary and expires immediately upon a transfer to another state.³

The question you pose addresses only the circumstances of the military person who qualifies for the first kind of permanent residency. Once this kind of residency is established, it can be maintained even if the person is absent from the state, as long as certain conditions are met:

- (a) In AS 16.05.330 – 16.05.430, a person, except as provided in (c) – (f) of this section, is a resident if the person
 - (1) is physically present in the state with the intent to remain in the state indefinitely and to make a home in the state;
 - (2) has maintained the person’s domicile in the state for the 12

1 AS 16.05.940(26)(A) provides:

In AS 16.05 – AS 16.40

...
(26) “resident” means

(A) a person who for the 12 consecutive months immediately preceding the time when the assertion of residence is made has maintained the person’s domicile in the state and who is neither claiming residency in another state, territory, or country nor obtaining benefits under a claim of residency in another state, territory, or country....

2 AS 16.05.940(26)(C) provides:

In AS 16.05 – AS 16.40

...
(26) “resident” means

...
(C) a member of the military service, or United States Coast Guard, who has been stationed in the state for the 12 consecutive months immediately preceding the time when the assertion of residence is made.

3 Alaska also has two other special exceptions for members of the military and their families who have been stationed in Alaska less than 12 months to obtain king salmon tags for \$20 instead of the \$100 charged to nonresidents. AS 16.05.340(a)(24). The same group may obtain “special nonresident military small game and sport fishing licenses at the rates for resident hunting and sport fishing licenses, but may not take big game without previously purchasing a regular nonresident hunting license and a numbered, nontransferable appropriate tag, issued at one-half of the nonresident rate....” AS 16.05.340(d). If other states have exceptions similar to these last two for members of the military, it would certainly not be reasonable to disqualify as Alaska residents those who take advantage of those exceptions because they would not be considered the equivalent of residency status.

consecutive months immediately preceding the application for a license;
(3) is not claiming residency in another state, territory, or country; and
(4) is not obtaining benefits under a claim of residency in another state, territory, or country.

(b) A person who establishes residency in the state under (a) of this section remains a resident during an absence from the state unless during the absence the person

(1) establishes or claims residency in another state, territory, or country;
or

(2) performs an act, or is absent under circumstances, that are inconsistent with the intent required under (a) of this section.

AS 16.05.415(a)-(b). For the purposes of this opinion, we presume that the person, after being transferred from Alaska to a new state, has continued to maintain a domicile in Alaska by declaring Alaska as his state of domicile under military laws and regulations and has not claimed residency or obtained a benefit of residency in the new state, unless obtaining a special military resident license in the new state is deemed to be a claim of residency or a benefit of residency.

Just as Alaska allows military personnel to obtain special “resident” licenses without establishment of domicile here, many states make special provisions for military personnel stationed there to obtain a “resident” license for the duration of their military assignment without meeting the general residency qualifications otherwise required of civilians.⁴

Depending on the exact nature of, and the requirements for obtaining, the special military “resident” license, a reasonable argument might be made that it does not amount to a claim of residency or a benefit obtained under a claim of residency because the license is a benefit extended on the basis of military status rather than state residency. The so-called “residency” status granted military personnel is different from general residency status requirements that must be met by the general public, and seems to contemplate that the person will not be giving up residency in the former state or declaring domicile in the new state. It could be argued that military personnel that take advantage of this offer are not really claiming residency or obtaining benefits under a claim of residency in the new state, but only claiming the benefits of their military status by taking advantage of a special military exception to the residency requirements in the new state.

⁴ See, e.g., Montana Code 87-2-102(1)(a)(ii) (member of military currently stationed in and assigned to active duty in Montana who has resided in Montana for at least 30 days is considered a resident for fish and game licensing purposes, but reassignment to another state terminates Montana residency); North Carolina Gen. Stat. §113-130(4)e (member of the armed forces of the United States stationed at a military facility in North Carolina deemed resident for duration of assignment). In some states, such as North Dakota, even a member of the United States armed forces who is within the state while on leave may receive a resident license for the duration of their stay, with no intention of becoming a resident. N.Dak. Cent. Code § 20.1-02-05(13).

On the other hand, Since the person would be obtaining a “resident” license with all the hunting and fishing benefits a “resident” receives, at least for the duration of their stay in that state, a reasonable argument could be made that the person is “claiming residency” or “obtaining benefits under a claim of residency in another state,” and is thus disqualified from Alaska residency under AS 16.05.415(a)-(b) and AS 16.05.940(26).

While it is not clear that a court would find the military resident’s interpretation the better one, it is possible that a court would find it a reasonable one. If a statute can reasonably be interpreted in more than one way, then it is considered ambiguous. A basic canon of statutory construction applied by the courts directs that, in a criminal prosecution, any ambiguities will be resolved in favor of the accused. *State v. Hazelwood*, 956 P.2d 875, 886 (Alaska 1997). Given this rule, prosecutions of members of the military for violation of Alaska’s fish and game residency requirements in cases where the person returns to Alaska to hunt or fish as a resident after obtaining a special military “resident” license in another state may prove to be problematic for the state.

IV. Conclusion and Recommendation:

We believe that a court may well find that obtaining a special military “resident” license in a particular state does not amount to a claim of residency or obtaining a benefit under a claim of residency. In such cases, members of the military would not be legally deemed to have forfeited their status as an Alaska resident. We recommend that, before charges are filed against anyone in this situation, the conditions and laws under which the license in the new state were obtained be thoroughly researched. If the new state’s laws grant a special privilege to members of the military as an exception to the general residency requirements, then charges should not be filed without prior consultation with the Department of Law.

We do believe that in order to carry Alaska residency with them to a new state, members of the military would have to have qualified under the general residency requirements of AS 16.05.940(26)(A) and AS 16.05.415(a)-(b) and not just under the special military residency provisions in AS 16.05.940(C) and AS 16.05.415(c). The provisions of AS 16.05.415(b) that allow someone to keep Alaska residency despite absences expressly applies only to those who qualify under the general residency requirements in AS 16.05.415(a). Certainly, the legislature did not intend a soldier who qualifies for a resident hunting or fishing license only because of being stationed in Alaska and who can still claim some other state as domicile while in Alaska to continue to carry this special Alaska residency after a transfer from the state.

cc: Major James E. Cockrell, Acting Director, Division of Fish and Wildlife Protection
Susan A. Parkes, Deputy Attorney General, Criminal Division, Department of Law