

## No. 169

**STATE FISH AND GAME COMMISSION—FOREST SUPERVISORS AND RANGERS—RESIDENT CITIZENS—ARMY—NAVY—MARINE CORPS—BIOLOGICAL SURVEY—DEPARTMENT OF AGRICULTURE**

**Held:** Employees of the Forest Service of the United States government—other than officers—are not included within the provisions of Section 3685 of the Revised Codes of Montana, 1935, and receive no benefits thereunder. The benefits thereof accrue only to officers, soldiers, sailors and marines of the United States Army, Navy or Marine Corps, as well as to officers of the Forest Service and of the Biological Survey of the United States Department of Agriculture.

July 16, 1941.

Dr. J. S. McFarland  
State Fish and Game Warden  
Capitol Building  
Helena, Montana

Dear Dr. McFarland:

You have submitted the question whether or not forest service officers and employees are entitled to fish under a resident license.

Section 3685 of the Revised Codes of Montana, 1935, provides:

“ . . . All citizens of the United States who have lived in this state at least six months immediately preceding their application for a license, or officers, soldiers, sailors and marines of the United States army, navy, or marine corps, shall be deemed resident citizens for the purpose of this section, as well as officers of the forest service and of the biological survey of the United States department of agriculture . . . ”

An “officer” is distinguished from an “employee” in the greater importance, dignity and independence of his position; in being required to take an official oath, and perhaps to give an official bond; and usually, though not necessarily, in the tenure of his position. (*Hudson v. Annear*, 75 Pac. (2nd) 587, 101 Colo. 550.)

The term “officer” is one inseparably connected with an office. (*Burnet v. McDonough* (C. C. A.), 56 Fed. (2nd) 944, 945.)

Strictly speaking, a person in the service of the government is not an officer of the United States unless he holds his position by virtue of the appointment of the President, or by one of the courts of justice, or by the head of the department authorized by law to make such appointment. (*United States v. Monat*, 8 S. Ct. 505-506, 124 U. S. 303; 31 L. Ed. 463.)

Forest supervisors and rangers are selected, when practicable, from qualified citizens of the states or territories in which the reserves, respectively, are situated. (February 1, 1905, C. 288, Section 3, 33 Stat. 628.)

In *Board of Trustees v. Pooler*, United States District Forester, et al., 38 N. M. 259 Pac. 629, forest supervisors and forest rangers are referred to as officers.

It is my opinion employees of the forest service of the United States government, other than officers, are not included within the provisions of Section 3685 of the Revised Codes of Montana, 1935, and receive no benefits thereunder. The benefits thereof accrue only to officers, soldiers, sailors and marines of the United States Army, Navy or Marine Corps, as well as to officers of the Forest Service and of the Biological Survey of the United States Department of Agriculture.

Sincerely yours,

JOHN W. BONNER  
Attorney General