

Opinion No. 641**Fish and Game—Licenses—Hunting Licenses.**

HELD: All legal residents of the state, as well as all persons who have lived in the state at least six months immediately preceding their application for a license, if citizens of the United States, are entitled to a resident license.

November 13, 1934.

You have submitted the question whether Mr. William Mayger, Jr., who has applied for a license to fish and to hunt game birds and animals, is required to pay what has been termed a "resident license" or a "non-resident license." You have submitted the following facts:

"A Mr. William Mayger, Jr., was born and raised in Lewis and Clark County and attended public schools here, and about in the year 1915, Mr. Mayger received an appointment in the foreign service of the Texaco Oil Company and was appointed to a position in China. Since 1915 Mr. Mayger has been in the continuous employ of the Texaco Company in positions in the Orient. At intervals that varied from three to four years he would be granted leaves of absence or vacations and in each of these instances when he was granted such vacation, he returned to Helena and Lewis and Clark County where these vacations were spent. During all these intervals since 1915 Mr. Mayger has considered himself a resident of Helena, Montana. On the 10th of September, 1934, he returned to Helena on one of the said vacations and took a cabin at Lincoln in Lewis and Clark County. On September 11, 1934, he applied for a Montana Resident License paying \$2.00 for said license.

"In this present situation Mr. Mayger and his family have resided outside the state and in the Orient since 1915, except for the intervals when he would return to Lewis and Clark County, Montana, for his vacations and during the interval he has not been a registered voter in the State of Montana."

Section 3685 R. C. M. 1921, as finally amended by Section 2, Chapter 161, Laws of 1931, provides: "Said applicant

if a resident of the State of Montana and a citizen of the United States, shall pay * * * Two Dollars (\$2.00) as a license fee, and shall obtain a license of Class A, * * *."

The fourth paragraph of this section as so amended, reads: "All citizens of the United States who have lived in this state at least six months immediately preceding their application for a license, * * * shall be deemed resident citizens for the purpose of this section, * * *."

The fifth paragraph of said section as amended, reads: "Said applicant, if a non-resident of the State or a resident for less than six months immediately preceding his application for a license and a citizen of the United States, shall pay * * * Three and 50/100 Dollars (\$3.50) as a license fee, * * *."

Such license entitles such holder to fish. By paying \$10.00 a non-resident is entitled to hunt game birds, while the payment of \$30.00 entitles him to hunt game animals.

The question arises whether it was the intention of the legislature to give the privilege of a "resident license" to one class only, (a) those persons who have actually lived in the state for six months immediately preceding application for license, or whether it was their intention to give this privilege to two classes: (a) those above mentioned, and (b) to resident citizens. In other words, is actually living in the state for six months preceding application for license, the test in all cases or may legal residence be also the test in some cases?

Whichever interpretation is given perhaps leads to some absurd consequences. If actual living in the state for six months preceding application is the test for residence in all cases for the purpose of this act, then a legal citizen of the state cannot obtain a license unless he can also show six months' actual residence immediately preceding his application. This interpretation would exclude our representatives in Congress and all persons who may have occasion for business, health or pleasure to leave the state unless they could show the full six months' actual residence preceding the application for license. In fact, many persons who have actually lived in the state for years, or for all their lives,

would not be entitled to a resident license if they should leave the state for any period of time however short, if they could not show the six months' actual residence. On the other hand, if legal residence is the test in some cases, a person who has moved to the state with the intention of remaining permanently but who has actually lived in the state for a few days, may obtain a resident license since actual residence for a definite period is not required in order to obtain a legal residence in the state. (Section 33 R. C. M. 1921). Of course, for certain purposes, for example, to obtain the right of franchise, actual residence in the state for one year, (Section 540) as well as other things, are required. (Section 574).

It is my opinion, however, that it was not the intention of the legislature to enact a law which would restrict the rights of residents and enlarge the rights of non-residents of the state. If that had been their intention, and if they had intended to give the right of "resident license" to those only who could show actual residence for six months preceding application, they did not use appropriate language to express it. In that event they would have omitted the words "a resident of the State of Montana" in the first, second and third paragraphs of Section 3685 as amended, as there would be no need for using these words. They would have begun the first paragraph of this section as follows: 'All citizens of the United States who have lived in this state at least six months immediately preceding their application for a license, shall pay * * * \$2.00 as a license fee.' In that event they would have omitted the words, "if a non-resident of the State" in the first line of paragraph 5 of this section and would have said, 'Said applicant, if a resident for less than six months immediately preceding his application for a license and a citizen of the United States, shall pay * * * \$3.50 as a license fee.' There would have been no purpose in using the words, "resident of the State" or "non-resident of the State," if legal residence has nothing to do with the matter and if six months actual residence is the sole test in all cases.

It is my opinion, therefore, that all legal residents of the state, as well as

all persons who have lived in the state at least six months immediately preceding their application for a license, if citizens of the United States, are entitled to a resident license.

The further question arises whether Mr. Mayger is a legal resident of the state. It is possible that the foregoing facts are not all the facts bearing upon the question. From such facts as are given, however, and applying the rule set forth in Section 33, R. C. M., 1921, we conclude that Mr. Mayger is a resident of the State of Montana. The fact that he lived abroad for a number of years is not of itself sufficient to deprive him of his legal residence in Montana, if, as it appears, it was always his intention to return to this state. The facts regarding his not voting in Montana, are not presented and we are, therefore, unable to draw any conclusion therefrom. There is no evidence that it was Mr. Mayger's intention to gain a residence in China, or to give up his residence in Montana, altho for many years he has lived and worked in China. Temporary residence merely for the purpose of transacting business, or for the sake of health, or pleasure, is not sufficient to constitute domicile. (19 C. J. 408, Section 22).

A notable example of one who maintained his residence in the United States altho he lived and conducted extensive business operations abroad, is that of Ex-President Herbert Hoover. As was said in *Pickering v. Winch*, 48 Ore. 500, 510, 87 Pac. 763, 9 L. R. A. (n. s.) 1159: "A person may live 50 years in a place, and not acquire a domicile, for he may have had all the time an intention to return to his own country."

As above stated, we may not have all the facts from which we can determine Mr. Mayger's legal residence, but from such facts as have been presented we are inclined to the opinion that he still maintains his residence in the State of Montana.