

No. 461

**ARMY—NAVY—MARINES—DENTAL EXAMINERS—
MILEAGE**

Held: A member of the United States Army, who is also a member of the State Board of Dental Examiners, is not entitled to mileage from the army post where he is situated, for attendance at a meeting of the board.

August 3, 1942.

Lieutenant T. C. Betzner
c/o Station Hospital
Pendleton Field
Pendleton, Oregon

Dear Lieutenant Betzner:

You have submitted to this office the following problem:

You were called into the armed forces of the United States from your home in Helena, where you had been practicing your profession as a dentist. While stationed in Oregon you returned to Helena to

attend, as a member, the annual meeting of the State Board of Dental Examiners. Are you entitled to mileage for your trip to Helena from Oregon?

In considering your problem the provisions of Section 3115.9, Revised Codes of Montana, 1935, are pertinent:

"Out of the funds coming into the possession of the board from the fees and dues charged as hereinabove provided, the sum of fifteen dollars (\$15.00) per day for each day actually engaged in the duties of his office and the amount of the actual railroad and Pullman fares **to and from his place of residence** to the place where the meeting of said board are held, shall be paid to each member of board attending such meetings." (Emphasis mine.)

Under the provisions of the foregoing quoted portion of the statute, mileage to and from the residence of the member is allowed; and it is therefore important to determine your place of residence.

Section 33, Revised Codes of Montana, 1935, provides:

"Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

- "1. It is the place where one remains when not called elsewhere for labor or other special or temporary purposes, and to which he returns in seasons of repose.
- "2. There can be only one residence
- "7. The residence can be changed only by the union of act and intent."

In your letter you said, "I am now in the United States Army and would like to know if my residence is here (Oregon) or Helena where my home is located?"

The question you asked would indicate you intend to return to Helena after your service is completed and brings you within the provisions of Subsection 1 of Section 33, referred to above. You have been called away for a special purpose from your home, and after the purpose has been completed you evidence an intent to return.

In the case of *Harris v. Harris*, 205 Iowa, 108, 215 N. W. 661, it was stated:

"An officer (in the Army) may ask for a post and may, on his application, be assigned to it, but this is entirely in the will of his superior officer and the choice is not in the power of the applicant. Nor does an officer, under martial discipline, when detailed for special duty in a certain place, acquire a domicile there, although he may take his family there, . . . and a person who enters the army of another country gets no domicile in the country of whose army he joins. . . Therefore, a person under such circumstances cannot, in any proper sense of the term, have a residence anywhere other than the home he has left, since he has no choice as to where he goes, the time he can remain, or when he shall return. To gain either an actual or legal residence there is, of necessity, involved at least the exercise of volition in its selection, and this cannot be affirmed of the residence of either a soldier or sailor in active service."

In *Johnston v. Benton*, 73 Cal. App. 565, 239 Pac. 60, the Court said:

"It is well settled that the domicile of a person is in no way affected by his enlistment in the civil, military, or naval service of his country; and he does not thereby abandon or lose his domicile which he had when he entered the service, nor does he acquire one at the place where he serves."

It is apparent from the authorities you are a resident of Helena, and have acquired no new residence because of your service in the Army.

It is my opinion a member of the State Board of Dental Examiners, who attends a meeting of the Board, is entitled to \$15.00 for each day he attends the meetings and is actually engaged in the duties of his office. It is my opinion a member of the Board who is in the Armed Services is not entitled to the amount of actual railroad and pullman fare from his army post, but only his actual railroad and pullman fare to and from his place of residence to the place of meeting of the Board.

Sincerely yours,

R. V. BOTTOMLY
Attorney General