

Opinion No. 128

**Fish and Game Commission—Retired
Navy Officers — Residents of
Montana—Licenses, Hunting
and Fishing**

Held: A retired officer of the United States Navy (Regular Navy) shall be deemed a resident of Montana for the purpose of securing resident hunting and fishing licenses, and shall pay the resident fee for such licenses.

July 30, 1948

Mr. A. A. O'Claire
State Fish and Game Warden
Capitol Building
Helena, Montana.

Dear Mr. O'Claire:

My opinion on the following has been requested:

Is a retired officer of the United States Navy (Regular Navy) deemed a resident citizen of Montana for the purpose of securing a resident hunting and fishing license?

Section 3685, Revised Codes of Montana, 1935, as amended by Chapter 174, Laws of 1939, and Chapter 215, Laws of 1947, provides in part:

"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 Act."

The status of retired Navy officers is similar to that of retired Army officers. The latter were accorded the right to purchase resident hunting and fishing licenses in Opinion No. 58, Volume 22, Report and Official Opinions of the Attorney General. What was there determined for retired officers of the Army applies equally to retired officers of the Navy. The status of a regular Navy officer upon retirement is treated in Title 34, U. S. C. A., Section 389, which provides in part:

"Title 34, Sec. 389. Officers retired from active service shall be

placed on the retired list of officers of the grades to which they belonged respectively at the time of their retirement, and continue to be borne on the Navy Register. They shall be entitled to wear the uniform of their respective grades, and shall be subject to the rules and articles for the government of the Navy and to trial by general court martial. . . ."

In *Franklin v. U. S.* (1893) 29 Court of Claims 6, at page 10, the Court held a retired Navy officer to be an officer of the Navy. In 29 Opinions of Attorneys General (U. S.) 503 (1912) a like holding was made.

Supplementing Opinion No. 58, Volume 22, of this office, above cited, it is my opinion a retired officer of the United States Navy (Regular Navy) shall be deemed a resident of Montana for the purpose of securing resident hunting and fishing licenses, and shall pay the resident fee for such licenses.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General