

## Opinion No. 58

**Retired Army Officers—Residents of Montana—Licenses, Hunting and Fishing.**

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

August 19, 1947

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

Dear Mr. O'Claire:

You have requested my opinion on the following:

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

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 composition of the Regular Army is set out in 10 U.S.C.A., Section 4, a portion of which section follows:

"The Regular Army of the United States shall consist of . . . the officers . . . of the retired list . . ."  
In 10 U.S.C.A., Section 1023, the status of retired officers of the Regular Army is laid down. This section states:

"Officers retired from active service shall be entitled to wear the uni-

form of the rank on which they may be retired. They shall continue to be borne on the Army Register, and shall be subject to the rules and articles of war, and to trial by general court-martial for any breach thereof."

The Supreme Court of the United States in the case of *United States v. Tyler*, 105 U.S. 244, 246, 26 L. Ed. 985, (1881) relating to retired officers of the Regular Army, ruled in part:

"It is impossible to hold that men who are by statute declared to be a part of the army, who may wear its uniform, whose names shall be borne upon its register, who may be assigned by their superior officers to specified duties by detail as other officers are, who are subject to the rules and articles of war, and may be tried, not by a jury, as other citizens are, but by a military court-martial, for any breach of those rules, and who may finally be dismissed on such trial from the service in disgrace, are still not in the military service." (Emphasis supplied).

Subsequent cases have limited the above rule in its specific application but have recognized its general validity.

It is, therefore, my opinion that a retired officer of the United States Army (Regular Army) shall be deemed a resident of Montana for the purpose of securing resident hunting and fishing licenses, and shall pay the resident fees for such licenses.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General