

LEGAL MEMORANDUM

Prepared for the  
Veterans' Affairs Subcommittee  
of the

State Administration, Public Retirement, and Veterans' Affairs  
Interim Committee

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February 15, 2000

Montana Resident Fish and Game Hunting License Requirement Violations  
by Armed Forces Members Holding or Applying for a License From Another State

## I Introduction

Recently, a member of the staff of Senator Conrad Burns received a message from a Montana resident, now a member of the armed services living in Texas, claiming that he was about to be charged with the offense of fraudulently obtaining a Montana resident hunting license. Apparently, the service member has been a resident of Montana for many years, holds a Montana resident hunting license, and also has been issued, gratis by other states, resident hunting licenses or privileges in those other states. The Senator's staff member forwarded the message to Committee staff, who in turn forwarded it to the Subcommittee Chair. Senator Hargrove asked for an analysis of the claims of the service member and the presentation of an information paper on the subject to the Subcommittee at the Subcommittee's next meeting. This legal memorandum contains the results of that analysis. No effort has been made to interject the results of the research and any conclusions reached in this memorandum into the claimed prosecution of the service member.

## II Discussion

The Montana resident hunting privileges of active duty members of the armed services are governed by section 87-2-102(1), MCA. Section 87-2-102 provides in pertinent part as follows:

87-2-102. **Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(a) the member was a resident of Montana under the provisions of subsection (4) at the time the member entered the armed forces and continues to meet residency criteria of subsections (4)(b) through (4)(e); or

(b) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and proof of

completion of a hunter safety course approved by the department, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making application for any license is eligible to receive hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

- (a) the person's principal or primary home or place of abode is in Montana;
- (b) the person files Montana state income tax returns as a resident if required to file;
- (c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;
- (d) the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and
- (e) if the person registers to vote, the person registers only in Montana.

Note that under subsection (1)(a), living in Montana as a Montana resident at the time of entering the armed forces qualifies a license applicant for a resident Montana resident hunting license under the conditions of subsections (4)(b) through (4)(e) and that, under subsections (1)(a) and (4), a service member who qualifies under subsection (1)(a) remains qualified for the resident license even though the service member no longer physically resides in Montana. However, subsection (4)(d) effectively prohibits a bona fide Montana resident who, as a member of the armed services in active federal military service, originally obtained a Montana resident hunting license pursuant to subsections (1)(a) and (4) from continuing to be considered a Montana resident for the purposes of the Montana resident hunting license if that bona fide resident possesses any resident hunting licenses from another state or even exercises resident hunting privileges in another state. While the subcommittee staff may not be

aware of all of the facts involved in the alleged pending prosecution of the service member, it is apparently because of subsection (4)(d) that the service member will not be considered a Montana resident and perhaps, by failing to disclose the receipt of other resident licenses or hunting privileges from other states at the time of reapplication for another Montana resident license, the service member could be said to have fraudulently obtained a Montana resident hunting license.

Another statute bearing on the predicament of the service member is 10 U.S.C. 2671 (copy attached). This statute, enacted by the Congress in 1958, requires the Secretary of Defense to adopt rules requiring service members who hunt, fish, or trap on military installations to perform those activities in accordance with the laws of the state in which the installation is located. This statute also requires the Secretary to adopt regulations requiring that services members who hunt, fish, or trap on an installation do so with a state license if the state issues a license to military nonresidents on terms equal to those issued to residents. The Secretary has adopted implementing regulations at 32 CFR 190.7. Therefore, under the Secretary's regulations, a service member must obtain a state license to hunt, fish, or trap on a federal military installation and, under the federal statute, that license must be a resident license or grant resident privileges if the state offers the same to service members.

The cumulative effect of the Montana and federal laws and the federal regulations cited above is that a service member who maintains Montana residency but performs active federal military duty in another state must under certain conditions obtain resident hunting privileges in that other state in order to hunt on the installation. However, those privileges, if applied for or granted in the form of a resident license, will prevent the service member from qualifying as a Montana resident for the purposes of a Montana resident hunting license. Of course, if an active duty service member who is a Montana resident but is stationed in another state wishes to hunt in that state on property that is not on a military installation, the service member must also obtain a hunting license issued by that state and, if that service member qualifies for and receives, or at least applies for, a resident hunting license under the statutes of that other state, section 87-2-102(4)(d) would likewise apply to prevent that service member from again obtaining a Montana resident hunting license.

### **III Conclusion**

Section 87-2-102(4)(d) acts to deny a Montana resident who is in active federal military service in another state and who has applied for or received a resident hunting license in that state from qualifying for a Montana resident hunting license. If the Subcommittee or a member believes that the public policy decisions implicit in that statute were incorrectly made or that those decisions should in any event be reversed, legislation may be requested and introduced to except from 87-2-102(4)(d) a person qualifying as a resident under 87-2-102(1)(a).

