

Opinion No. 23-3717

July 16, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Mrs. Grace B. Melaven, State Game and Fish Warden, Santa Fe, New Mexico.

"Resident" Within the Meaning of the Game and Fish Laws is One Making His Home in the State, Voting, or Meaning to Vote Here and Whose Residence has been of at Least Six Months' Duration.

OPINION

{*69} Your inquiry involves the following statements:

"There are a number of people who own summer homes in New Mexico and winter homes in some other state. They reside about half of the time here and the other half in the other state, and claim the privilege of buying a resident license;

"There are artists who maintain studios in New Mexico and also in some other state, residing in the State and working here at certain seasons of the year and in some other state at other seasons;

"There are students (mostly minors) who attend New Mexico Military or out-door schools, and generally arrive here a few weeks before the fishing season opens, but are signed up for a year's scholarship, and who desire to buy resident licenses."

The word "resident" as used in the game and fish laws of this state means "one who has a residence, in a legal sense." The Century Dictionary defines residence as "the place where a man's habitation is fixed, without any present purpose of removing therefrom; domicile."

We think the foregoing correctly defines "bona fide resident" as used in the statutes under consideration. In any event, the term "resident" involves the idea of something beyond a transient stay in a place. To be a resident one must abide in a place; have a home there. If one has a home elsewhere and has his voting precinct at such home, he is not a resident within the meaning of our law.

A person is not entitled to a resident hunting or fishing license in this state unless he has been a bona fide resident of this state for six months next before his application for such license. -- Sec. 3, Chap. 133, S. L. 1919.

Keeping in view the foregoing citation and definitions, residents as to students may be further determined by reference to the Constitution. Sec. 4 of Art. 7 of the State

Constitution provides: "No person shall be deemed to have acquired or lost residence by reason of his presence or absence * * * while a student at any school."

Of course, the question of residents is somewhat different under Chap. 113 of the S. L. of 1921, relating to un-naturalized, foreign born residents. Sec. 1 of that Act provides:

"For the purpose of this Act any un-naturalized, foreign born person who shall reside or live in this State, or in any of the adjoining states, for five consecutive days, shall be considered a resident and be liable to the penalties imposed for violation of the provisions of this act."