

**Opinion No. 31-280**

September 25, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. Elliott S. Barker, State Game Warden, Dept. of Game and Fish, Santa Fe, New Mexico.

{\*108} Your letter of September 24th refers to paragraph 6 of Section 57-217, New Mexico Statutes Annotated, 1929 Compilation, which reads as follows:

"Any citizen of the United States who has been a bona fide resident of this state for the six months immediately preceding the date of application therefor shall be entitled to procure a resident hunting or fishing license."

You wish to know whether or not soldiers of the regular army and not having residence in New Mexico prior to date of enlistment should be entitled to a resident license if stationed outside of this state or who have been stationed within the state for less than six months?

The generally accepted definition of residence is, that it is a person's fixed place of abode and to which he intends to return when absent therefrom.

We do not believe army service alone would be sufficient to enable a person to acquire a bona fide residence in this state.

This view is strengthened by Section 4, Article 7 of our State Constitution, which provides that:

"No person shall be deemed to have acquired or lost residence by reason of his presence or absence while employed in the service of the United States or of the state, nor while a student at any school."

In our opinion the soldiers with no prior residence in New Mexico would not be entitled to residence licenses. Certainly soldiers stationed outside of this state and with no prior New Mexico residence would not be entitled to residence licenses. A soldier with prior bona fide New Mexico residence and stationed outside the state would in all probability be deemed to have continued his New Mexico residence and in all {\*109} probability would be entitled to a resident license.

Trusting the foregoing has sufficiently answered your inquiry, I am

By: Frank H. Patton,

Asst. Attorney General