

Opinion No. 48-5175

October 19, 1948

BY: C. C. McCULLOH, Attorney General

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

{*170} We wish to acknowledge receipt of your inquiry of Oct. 8, 1948 wherein our opinion was requested as to the following questions, to-wit:

(1) Are persons who have lived and maintained their residence for the required six months on the area at Los Alamos, which was acquired through condemnation, and who have no other claim to residence in the state, eligible to purchase resident hunting and fishing licenses?

Under the decision handed down by the Supreme Court of New Mexico in the case of R. F. Deacon Arledge, Informant, vs. Thomas J. Mabry, etc, et al, Respondents, on Sept, 21, 1948, such persons cannot become residents of the State of New Mexico, as such area is under the exclusive jurisdiction of the Federal Government.

(2) In the event the answer to question 1 is in the negative, shall such persons as have previously purchased resident licenses in good faith be entitled to use them for the balance of the license year or must they be required to replace the resident licenses with non-resident licenses?

Under the aforementioned Supreme Court decision such persons are not, and cannot become residents of the State of New Mexico by residing on the aforementioned condemned lands, and therefore any of those persons holding resident licenses as the former resident licenses held by those persons are invalidated by said Supreme Court decision.

{*171} (3) Would any person who had been an actual bona-fide resident of the State for six months onto and taking up residence on the area affected by the Court's decision forfeit his rights to purchase and use resident hunting and fishing licenses by reason of his present residence on the out-of-bounds area? This would include persons who, perhaps, have been residents of the state all their lives, as well as those coming to the state from other states.

Any overall answer to this question is impossible. Each individual case would rest on its own facts for it all boils down to a matter of intent in each case. If the person in question, say, left Clovis to take a job in the condemned area at Los Alamos but with no intention of abandoning Clovis as his place of residence, then certainly he would still be a resident of the State and entitled to purchase resident licenses.

Trusting the aforementioned satisfies your inquiry, I am

By ROBERT V. WOLLARD,

Asst. Atty. General