

Hon. Carl L. Rosier, Comm'r
Dept. of Fish and Game

November 4, 1991

663-92-0132

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Military sport fish
licenses

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You have asked for clarification of AS 16.05.340(d), an Act relating to fees for fish and small game licenses for military personnel. Specifically, you wish to know whether members of patrol squadrons assigned to the Adak Naval Air Station are "permanently stationed" in Alaska within the meaning of the statute. In summary, the answer to this question depends upon the procedure the military uses to assign personnel to Adak. If the personnel are assigned to duty in Alaska, or have their home port in Alaska, "under orders . . . which do not in terms provide for the termination thereof," those personnel are "permanently stationed" in this state and fall within the scope of the statute. On the other hand, if those personnel are assigned to duty away from their home port for a limited term, they are not "permanently stationed" in Alaska and are not entitled to special nonresident military small game and sport fishing licenses. Under the facts as they have been presented to us, it appears members of these patrol squadrons are not permanently stationed in the state.

FACTS

Patrol Squadron Nine has its home port at the Moffet Field Naval Air Station in San Francisco, California. According to Lt. Cmdr. J.B. Hollyer of the U.S. Navy, "[t]he 'Golden Eagles' of Patrol Squadron Nine deploy to all bases in the Pacific theatre on four to six month unaccompanied detachments."

Patrol Squadron Nine is currently assigned to the Patrol Wing Pacific Detachment at the Adak Naval Air Station in Alaska. Over half of the squadron, 153 squadron personnel, are currently in Adak. These men and women work 12-18 hours per day, seven days per week, maintaining the squadron aircraft in a "full mission capable" status. The flight crews stand continuous one-hour launch alerts to provide medical evacuation services throughout the Aleutian chain, as well as support for the United States Navy's Northern Pacific maritime patrol.

One of the few methods of recreation available to these

men and women during their off-duty hours is sport fishing. The fees the state imposes for nonresident sport fishing licenses vary from \$10 per day to \$50 for six months. However, military personnel "permanently stationed" in Alaska are eligible to receive a "special nonresident military . . . sport fishing license[]" for \$10. AS 16.05.340(d). According to Lt. Cmdr. Hollyer, "[a] fee of \$50.00 dollars, for a young sailor away from home and supporting his family in the expensive San Francisco bay area is a very difficult expense to bear and is quite discouraging." The Department of Fish and Game's licensing section and the Department of Public Safety, Division of Fish and Wildlife Protection, however, take the position that squadrons sent to Adak for six months of active duty are not "permanently stationed" in Alaska and, therefore, do not satisfy the statutory requirements of AS 16.05.340(d).

DISCUSSION

1. HISTORY OF THE STATUTE

On January 23, 1976, Senate Bill No. 565, "relating to military residency required for fish and game licenses," was introduced in the Senate. The bill proposed to amend the definition of "resident" in AS 16.05.940 to include "a member of the military service on active duty who is permanently stationed in the state" On April 8, 1976, a sponsor substitute for Senate Bill No. 565 was introduced. Instead of amending the definition of resident, this bill proposed to add a section to the statute governing license and tag fees to allow members of the military to obtain nonresident hunting or sports fishing licenses at the resident rate. This version was further modified after referral to the House and Senate Natural Resources Committees. The committee substitute created "special nonresident military small game and sport fishing licenses" available to members of the military service. This version, with minor corrections, was eventually adopted:

Members of the military service on active duty who are *permanently stationed* in the state, and their dependents, who do not qualify as residents under AS 16.05.940, may obtain special nonresident military small game and sport fishing licenses at the rates for resident hunting and sport fishing licenses, but may not take a big game animal without previously purchasing a regular nonresident hunting license and a numbered, nontransferable appropriate tag, issued at one-half of the nonres-

ident rate, under (a)(15) of this section.

AS 16.05.340(d) (emphasis added).

The phrase "permanently stationed in the state" is found in all three versions of Senate Bill No. 565. While a review of the legislative history reveals a concern for the impact on fish and wildlife resources resulting from special licenses for military personnel, comments regarding the meaning of this phrase were not found. See *Hearing on S.B. 565 Before the State Senate Resources Committee*, March 12, 1976, and April 29, 1976 (tapes on file at the Legislative Reference Library, Legislative Affairs Agency, 240 Main St., Juneau, Alaska).

2. STATUTORY INTERPRETATION

In general, words in a statute are to be given their ordinary or common meaning. See *Fairbanks North Star Borough School Dist. v. NEA-Alaska, Inc.* ____ P.2d ____, Op. No. 3751 (Alaska, Sept. 27, 1991) at 6; 2A N. Singer, *Sutherland Statutory Construction* • 47.28 (4th ed. 1984). However, where the legislature has chosen technical terms or terms of art, those terms are presumed to have their technical meaning. *Sutherland* • 47.29. See *Sullivan v. Fox*, 189 Cal. App. 3d 673, 235 Cal. Rptr. 5, (1987). The same may be said of legal terms. Absent legislative intent to the contrary, or other evidence of a different meaning, legal terms in a statute are presumed to have been used in their legal sense. *Sutherland* • 47.30.

It is also well established that statutes should be interpreted to avoid unreasonable results whenever possible. *Sierra Club v. Env'tl. Protection Agency*, 719 F.2d 436, 445 (D.C. Cir. 1983). A statute will not be given a literal construction when to do so would produce an absurd or unjust result or would clearly be inconsistent with the purposes and policies of the act in question. *Foxgord v. Hischemoeller*, 820 F.2d 1030, 1034 (9th Cir. 1987).

Applying the foregoing rules of statutory construction to the phrase "permanently stationed," it is apparent the common or ordinary meaning of the words used was not intended. Applying the ordinary meaning of "permanently" might require a member of the armed services to be assigned to the Adak Naval Air Station for the remainder of his or her life before being entitled to a special military sport fishing license. This seems to us an intent not reasonably attributable to the legislature, especially since any person, whether a member of the military or not, may be

considered a resident after 12 months. See AS 16.05.940(24). It follows that the phrase "permanently stationed" must have a technical or legal meaning we may use to ascertain the legislature's intent. Moreover, the language should be interpreted on the assumption the legislature was aware of existing law when it adopted the statute in question. See *Western Pacific R. Corp. v. Western Pacific R. Co.*, 345 U.S. 247, 253-56, 97 L. Ed. 986, 73 S. Ct. 656 (1953) (28 U.S.C. • 46 interpreted on assumption legislature was aware of pre-existing supreme court precedent). See also *Bargman v. Economic Laboratory, Inc.*, 181 Ill. App. 3d 1023, 537 N.E.2d 938 (1989).

The phrases "permanent station" and "permanent change of station" are used numerous times throughout the statutes and regulations governing the Department of Defense and the Armed Services. A review of some of these statutes and regulations indicates the Armed Services clearly distinguish between temporary duty assignments and permanent changes of station. See, e.g., 32 C.F.R. • 552.18 (1990) (providing for an "Official Personnel Register . . . for registering military personnel on arrival at or on departure from Army installations on permanent change of station, leave, or temporary duty"); 32 C.F.R. • 75.6-(h) (1990) (procedure for seeking separation or assignment to noncombat duties by reason of conscientious objection); 32 C.F.R. • 199.13(c)(5)(v) (1990) (civilian health and medical program of the uniformed services, active duty dependent's dental plan); 32 C.F.R. • 288.6(b)(ii) (1990) (user charges and fees for special services); 32 C.F.R. • 390.5 (1990) (organization of Armed Forces Radio Biology Research Institute); 32 C.F.R. • 513.2(d)(5) (1990) (administrative procedure for processing complaints on indebtedness of military personnel); 32 C.F.R. • 527.10 (1990) (duties of installation commanders with respect to personal check cashing control and abuse prevention); 32 C.F.R. • 536.50(f) (1990) (claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act). See generally 10 U.S.C. •• 113, 702, 824, 832, 836, 838, 854, 886, 887, 892, 933, 1056, 2634, 2828, 3075, 4748, 4771, 6113, 6157, 8075, and 9748; 37 U.S.C. •• 301, 402-404, 404a, 405a, 406-408, 411, 411b, 411d, 411e, 411g, 419, 420, 429, 430, and 1006. See also *Crownover v. Crownover*, 274 P.2d 127 (N.M. 1954) (discussing permanent change of station and temporary duty assignments for purposes of residency requirement under New Mexico's divorce law).

The phrase "permanent station" is defined as
the place on shore where a member is assigned to

duty, or the home yard or the home port of a ship in which a member is required to perform duty, under orders in each case which do not in terms provide for the termination thereof. . . .

Executive Order No. 11157 • 401(d), June 22, 1964, as amended, *following* 37 U.S.C. • 301 (emphasis added).

Applying the definition of "permanent station" contained in Executive Order No. 11157 to the facts presented here, it does not appear the members of Patrol Squadron Nine are permanently stationed in Alaska. Their home port, their families, and the rest of their squadron are in San Francisco. They are present in Adak for terms of duty lasting from four to six months. According to Lt. Cmdr. Hollyer, Patrol Squadron Nine is "deploy[ed]" to Adak. "Deploy" is a military term that connotes temporary duty, not a permanent assignment. For example, Navy regulations governing the release of public information define "deployable units" as follows:

Those units that normally deploy from home port or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises. This includes routinely deployable ships, aviation squadrons, and operational staffs.

32 C.F.R. • 701.8(a)(2)(ii) (1990) (emphasis added). Patrol Squadron Nine is probably the best example there is of a deployable unit. Unfortunately, that status also makes it the best example of a unit that is not permanently stationed in Alaska.

3. AGENCY DISCRETION

Implicit in your request for an informal opinion is the further question of whether the Department of Fish and Game has the discretion to interpret the phrase "permanently stationed" to include military personnel on temporary duty, notwithstanding contrary federal authority. An analysis of this question requires application of the standards governing the scope of agency discretion.

The court will review an administrative interpretation of legislation to determine whether it is "consistent with and reasonably necessary to carry out the purposes of the authorizing statute." *Fairbanks North Star Borough School Dist. v. NEA-Alaska, Inc.*, ____ P.2d ____, Op. No. 3751 at 4 (Alaska,

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Sept. 27, 1991); *Vail v. Coffman Engineers*, 778 P.2d 211, 214 (Alaska 1989). See AS 44.62.030. The court will give "some weight" to the agency's approach. *NEA-Alaska* at 5; *Nat'l Bank of Alaska v. State, Dep't of Revenue*, 642 P.2d 811, 815 (Alaska 1982). However, on issues of statutory interpretation, the court will "substitute [its] independent judgment for that of the agency." *NEA-Alaska* at 5. See *Union Oil Co. V. State, Dep't of Revenue*, 560 P.2d 21, 23 (Alaska 1977) ("Statutory interpretation is within the scope of the court's special competency, and it is our duty to consider the statute independently").

In our opinion, an interpretation allowing military personnel on temporary duty assignments to obtain special non-resident sport licenses would directly contradict the express intent of the legislature. If the Alaska legislature had wished to extend the privileges contained in AS 16.05.340(d) to military personnel on temporary duty in Alaska, it could have easily chosen terms to express that intent. Since the legislature is presumed to have been aware of the statutes and regulations relating to "permanent station" assignments under military law, see *Sutherland* • 51.02, it would be, in our view, unreasonable for the department to adopt a contrary interpretation. Of course, should it so desire, the legislature may amend the statute to provide a broader definition.

I hope this memorandum has fully addressed your concerns. If you have further questions, please let me know.

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