

Ann Boudreaux, Director
Division of Occupational Licensing
Department of Commerce and
Economic Development

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Restricted guide
licenses and military-
sponsored hunts

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In January 1991, the former director of the Division of Occupational Licensing asked for our advice on two questions posed by the Big Game Commercial Service Board (board). Please excuse the delay in responding to these requests. First, may the board issue restricted licenses to guides? Second, must a military organization such as the Air Force secure a transporter license or commercial use permit when the organization transports its members to go hunting?

DISCUSSION

Question One

The answer to question one is that the board may not issue restricted guide licenses.¹ The statutes concerning guides are set out in AS 08.54; these statutes do not provide for issuance of a restricted license. Although there is limited case law on this issue, our research indicates that where an applicant has satisfied license qualifications a board may not issue a restricted license. Alvarez v. Dept. of Professional Regulation, 546 So. 2d 726, 727 (Fla. 1989). Similarly, we believe that where an applicant fails to satisfy statutory license qualifications the board may not issue a restricted license.²

¹ In your memorandum you indicated that the board has considered restricting licenses to particular game species. For example, the board would issue a guide license to an individual limiting the individual to hunting for bears and no other big game. Correspondingly, the big game species questions in the examination required for this licensure would be limited to questions on bears.

² You indicate the commissioner previously issued a restricted guide license under AS 08.54.410. We believe that the commissioner may not issue a restricted guide license for the reasons stated above.

However, the board may impose restrictions on an existing license as is appropriate pursuant to a disciplinary action. AS 08.54.500; 08.01.075.

Question Two

There are two parts to question two; the answer to part one is that under the circumstances you have described the military organization (organization) is not acting as a transporter as defined in AS 08.54.590(13).³ According to Air Force staff, the organization transported hunters for a fee; however, the fee was a reimbursement for expenses. Because the fee was a reimbursement, it does not amount to "compensation" as defined in AS 08.54.590(6).⁴ Thus, the organization did not

³ AS 08.54.590(13) provides:

"transportation services" means the carriage for compensation of big game hunters, their equipment, or big game animals harvested by hunters to, from, or in the field; "transportation services" does not include the carriage by aircraft of big game hunters, their equipment, or big game animals harvested by hunters

(A) on nonstop flights between state or federally maintained airports; or

(B) by an air taxi operator or air carrier for which the carriage of big game hunters, their equipment, or big game animals harvested by hunters is only an incidental, as defined by the board, portion of its business.

(Emphasis added.)

⁴ AS 08.54.590(6) provides:

"compensation" means payment for services including wages or other remuneration but not including reimbursement for actual expenses incurred.

provide transportation services as defined in AS 08.54.460 and would not be required to secure a transporter license.⁵

The answer to the second part of question two is that the organization is not required to secure a commercial use permit under AS 08.54.460.⁶ Although the organization may have provided other big game commercial services as defined in AS 08.54.460, the organization was not providing these services for compensation as defined above. Furthermore, the organization appears to be a hunting club (club) as defined in AS 08.54.590(11).⁷ Under AS 08.54.460(b), a commercial-use

⁵ Because the Air Force is not providing transporter services, we do not reach the question of whether the state is prohibited by federal law from requiring that the organization secure a transporter license. However, if the organization did provide transporter services, the state would not be prohibited from requiring that it secure a license so long as the military organization was treated on the same basis as state residents with respect to license fees. 1977 Inf. Op. Att'y Gen. (Dec. 17; 663-78-184).

Furthermore, recent conversations with Air Force staff reveal that the organization discontinued sponsoring hunts in 1991.

⁶ AS 08.54.460 provides:

A person, other than a guide-outfitter, . . . or a transporter, who provides other big game commercial services for compensation shall register with the board . . . and shall obtain a commercial use permit and pay the annual commercial use permit fee set under AS 08.54.470. In this section 'other big game commercial services' includes provision of accommodations in the field at a permanent lodge, house, or cabin owned by the commercial use permit holder, hunt broker services, gear rental services, photographic or videographic services, and services as defined by the board by regulation.

(Emphasis added.)

⁷ AS 08.54.590(11) provides:

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permit may not be issued to a club, and a club may not provide other big game commercial services for compensation.

We trust this memorandum answers your questions.

SJF:jp

cc: Members, Big Game Commercial Services Board
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(..continued)

"hunting club" means an organization that offers use of property or services to individuals who pay a membership fee for the privilege of using property or services for hunting.