



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Commercial Fisheries Entry Commission

8800 Glacier Highway, Suite 109
PO Box 110302
Juneau, Alaska 99811-0302
Main: 907.789.6160
Licensing: 907.789.6150
Fax: 907.789.6170

To: Benjamin Brown, Commissioner Date: March 25, 2015
From: Frank Glass, Subject: Residency Claims
Adjudications Project Leader

You asked me to prepare a response to the inquiry by Reid Harris about issues presented by a constituent to Rep. Louise Stutes.

A similar request for a response was presented to the CFEC by the Office of the Governor. That inquiry included a list of 159 individuals with addresses outside of Alaska and of 2289 individuals who were said to have claimed Alaska residency but did not receive Permanent Fund dividends.

False claims of Alaska residency are a serious concern that should be investigated, but the lists generated from CFEC data and PFD data are not a good starting point for reasons including:

1. Not all qualified Alaska residents apply for PFDs. Some just neglect to do so. Others want to spite judgment creditors.
2. The PFD program bases its qualifications on a specific calendar year. CFEC licenses are based on the 12 months before permit renewal.
3. The PFD program limits the number of days the applicant can be away from Alaska; longer absences must be for specified allowable reasons. An Alaskan resident can fail to qualify for a dividend if reasons for absence are not on the allowable list.
4. The list of individuals claiming to be residents is overinclusive. Some are listed as permit holders even though their permits may have been cancelled years earlier for non-renewal; the CFEC continues to list these permits and the address of the last holder in order to preserve the unique permit number. Some listed individuals obtained their permits by transfer, after the permit had been renewed by the prior owner. Not all entries in the data base about resident status are based on declarations made on the renewal form by the permit holder.
5. Some legitimate Alaska residents can use out of state addresses if they are away for higher education, military service, or other reasons that have long been recognized as allowable absences.

My recommendation for investigating false claims of Alaska residency is to try to locate individuals who made simultaneous claims for residency-based benefits in other states.

Exchanging fishing licensing information with the State of Washington was a productive exercise in the past. Similar inquiries could be made today.

I would recommend that this line of inquiry be made by the Department of Public Safety because their investigation could be broadened to include all agencies that have benefits based on Alaska residency and because their personnel are based throughout Alaska.

The remainder of this memorandum is about the CFEC's experience in the investigation and enforcement of residency claims over the years and about my recommendations for pursuing these claims.

Background

Prior to the Alaska Supreme Court's decision in *Carlson v. State*, 798 P.2d 1269 (Alaska 1990). (*Carlson I.*) the CFEC charged nonresidents three times the permit renewal fee paid by residents. This 3:1 differential applied to all permits held by an individual each year. But as a result of the *Carlson* case, the CFEC now charges each nonresident one annual surcharge (currently \$190) no matter how many permits they hold.

During the 1980s, the CFEC was actively investigating and pursuing enforcement actions for false residency claims. At that time, the arrearages owed to the state by nonresidents who paid resident fees could be considerable, especially for fishermen who held several permits each year.

And in addition, limited entry permit applications at the time had a ranking criterion based on the population or urban/rural character of their place of domicile. Applicants from sparsely populated or rural areas received points, while applicants from cities or densely populated areas did not. This criterion, known as "availability of alternative occupations" in the point system, although not based on Alaska residence per se, tended to favor fishermen from smaller Alaskan communities. The CFEC found that nonresidents who falsely claimed to be residents when renewing permits often made false claims about their place of domicile on their entry permit applications also.

The *Carlson* case resulted in five decisions by the Alaska Supreme Court. The final decision in the case was issued in 2012. Most of the members of the class who qualified for refunds received them in 2014.

Because the *Carlson* class action was for partial or total refunds of the differential between resident and nonresident permit and license fees dating back to 1984, the CFEC decided, in 1994, to put permit fee arrearage cases on hold, pending the final resolution of *Carlson*. It made no sense to collect arrearages that would later be repaid, with interest, to nonresident permit holders.

In permit application point systems adopted after 1987, the CFEC dropped the criterion of "availability of alternative occupations" based on the applicant's place of domicile. Participants in the fisheries limited after 1987 tended to be Alaskans from fishing communities, so it was thought to be unnecessary to use a criterion that would give most applicants the same number of points. In addition, classifications based on geography were often challenged in

court. After one Alaska Supreme Court decision, the CFEC had to revise the way it awarded availability of alternative occupations points in the salmon fisheries. *Deubelbeiss v. CFEC*, 689 P.2d 487 (Alaska 1984).

In large part due to these legal circumstances, the CFEC cut back on its investigation and enforcement of cases involving residency.

Administrative costs of investigation and enforcement

When we were actively investigating false residency claims, we found that the cases that were the most easily prosecuted and proven are those where someone claiming to be an Alaska resident made simultaneous claims of being a resident somewhere else. When the CFEC was actively investigating and enforcing residency cases in the 1980s, it entered a cooperative agreement with the State of Washington where Alaska and Washington exchanged licensing information and found a number of individuals who were claiming to be residents of both states at the same time.

Some of these cases were referred to law enforcement for criminal charges. Some were pursued under the CFEC's "notice to show cause" statute, AS 16.43.960, which allowed the CFEC to revoke or suspend permits and impose fines upon proof that someone knowingly provided false information to the CFEC for the purpose of obtaining a benefit.

In cases where the individual had not made simultaneous residency claims in Alaska and another state, but we had some evidence of activities inconsistent with an Alaska domicile, the investigation and enforcement costs were considerably higher. The inquiry needed to focus on the places where the individual was physical present during the year before permit renewal, and make an inquiry about the activities of other family members, employment history, vehicle licensing and usage, property ownership, storage of personal belongings. The CFEC employed a full-time investigator to make these inquiries during the early 1980s.

But in many these cases, where the CFEC had to weigh factors consistent with Alaska residency against inconsistent factors, the CFEC was not able to prove that the individual **knowingly** made a false claim. We found a number of mistaken claims, where the claimant based a residency claim on things like registering to vote in Alaska, owning residential property in Alaska, and spending more time each year in Alaska than anywhere else, but had not actually established Alaska as their place of domicile. Without proof of a knowingly false claim, the CFEC could not impose punitive sanctions, but could collect the arrearage between the resident and nonresident fee. Before *Carlson*, that differential could amount to thousands of dollars. After *Carlson*, the differential is less than two hundred dollars per year.

The "Residency Info Sheet" link on the Residency Definition page on ADF&G's licensing web site, www.adfg.alaska.gov/index.cfm?adfg=license.residency, highlights the distinction between cases based on simultaneous residency claims in two different states versus cases based on the more subjective aspects of domicile. When discussing simultaneous claims, the information sheet is unequivocal. If you vote or claim a benefit based on residency elsewhere, you cannot claim resident status in Alaska. But when examining more subjective

matters or weighing factors both consistent and inconsistent with Alaska residency, it has to use qualifiers like "probably," "could be in question," "will be taken into consideration," "appears," and "unlikely."

The CFEC does not require permit holders to provide evidence of residence at each application or renewal. But they do require that each permit holder claiming resident status check the resident box on the form. The applicant must also certify under penalty of perjury that the information on the form is correct. The regulation defining a resident for permit purposes is quoted on the form. The regulation, 20 AAC 05.290, says:

For the purpose of assessing fees for the application for, annual issuance of, or renewal of entry and interim-use permits, an individual is a resident of this state if, on the date of permit application, issuance, or renewal, and throughout the 12-month period before that date, the individual maintained their domicile in this state, did not claim residency in another state, territory, or country, and did not obtain benefits under a claim of residency in another state, territory, or country.

Probably all state agencies that have a definition of residency include the elements of domicile and absence of residency-based claims or benefits elsewhere. Durational requirements vary.

Recommendation and conclusion

Based on the CFEC's experience in investigating and enforcing residency cases, my recommendation is to focus on cases of simultaneous residency claims or benefits elsewhere. These kinds of claims include:

Fishing and hunting licenses

Voting

School tuition at public colleges and universities

Homestead exemptions

Property tax exemptions

Tax deductions/exemptions for sales of principal place of residence, travel expense, property as a business expense.

I would suggest that the Department of Public Safety take the lead in investigating residency cases. The Department has personnel throughout the state who could investigate suspicious cases in the communities where an individual claims to reside. They could also consider cases of crewmember licenses, which are issued by ADF&G, but have the same nonresident surcharge that applies to CFEC permits. And in addition, they may want to consider those with Alaska sport fishing and hunting licenses.