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Earl Warren
Sept 1942

MEMORANDUM

on

THE CALIFORNIA ALIEN LAND LAW

AND DECISIONS THEREUNDER

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History and Background
of the Statute

The California Alien Land Law (Stats. 1913, p. 206) was first passed by the legislature in 1913. This law specifically allowed aliens ineligible to citizenship to lease lands for agricultural purposes for a term not exceeding three years. In 1920 a more inclusive law (Stats. 1921, p. lxxxiii) was drawn and submitted to the people as an initiative measure. This measure was adopted by the people. The law as thus amended made it impossible for aliens ineligible to citizenship to lease lands for agricultural purposes. Decisions of the Courts under the 1913 law will have to be read with this distinction in view. The law was virtually rewritten by the legislature in 1923 (Stats. 1923, p. 1020 et seq.), although no basic change was made in the law at that time. In 1927, two new sections, 9a and 9b, were added to this law by the legislature (Stats. 1927, p. 881). These sections had to do with the matter of casting the burden of proving citizenship upon the defendants in any action brought under the Alien Land Law. Since 1927 the law has not been amended, and may be now found in its full and complete text as Act 261 of Deering's 1937 General Laws (Vol. 1, p. 114).

The policy of the statute is ably expressed in Terrace v. Thompson, 274 Fed. 841. The Court says, at p. 849:

> "It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state, and, so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of noncitizens. Such a result

would leave the foundation of the state but a pale shadow, and the structure erected thereon but a Tower of Babel, from which the tenants in possession might, when the shock of war came, bow themselves out, because they were not bound as citizens to defend the house in which they lodged."

For practical purposes, it may be said that the right of citizenship is now confined to aliens "being a free white person" or of African nativity. "White person" has been held by the United States Supreme Court to be synonymous with the term "a person of the Caucasian race". (Ozawa v. United States, 260 U. S. 178; Yamashita v. Hinkle, 260 U. S. 199.) The rule is now well established that the courts do not consider the matter of who is a "white person" from the ethnological or anthropological standpoint. The courts have held that the original lawmakers may not have had the yellow race in mind when the original Naturalization Law was drawn, but they certainly had the white race in mind as they then knew it, and they wanted to exclude all others from citizenship. Such being the case, the courts have held that the privilege of citizenship is confined to "white aliens", to the exclusion of all other colors, except when the alien is of African origin. (See: United States v. Bhagat Singh Thind, 261 U. S. 204.)

The Alien Land Law has been before the United States Supreme Court on a number of occasions. Virtually every phase of the law has been passed upon by some court, either State or Federal.

Synopsis of each Section
of the Alien Land Law
and Decisions thereunder

Section 1: Aliens eligible to citizenship. Authorizes such aliens to acquire and own real property.

Section 2: Other Aliens. Denies such aliens the right to acquire, possess, enjoy, use, cultivate, occupy and transfer real property or any interest in it, subject to the alien's rights under any treaty then in existence between the United States and the alien's nation.

The purpose of this law is to reserve ownership and control of the land either to citizens or those aliens who are eligible to citizenship.

Terrace v. Thompson,
263 U. S. 197, reported
below in 271 Fed. 841

Mott v. Cline, 200 Cal. 434

The State has the power to pass laws which will limit the ownership and occupation of its lands to citizens or those eligible to citizenship.

Morrison v. California,
291 U. S. 82, reported
below in 218 Cal. 287

Almost every aspect of the law has been passed upon by the courts and with limited exceptions (Secs. 4 and 9a) has been uniformly held to be constitutional.

Porterfield v. Webb,
263 U. S. 225, reported
below in 195 Cal. 71

In re Akado,
188 Cal. 739

Frick v. Webb,
263 U. S. 326

Webb v. O'Brien,
263 U. S. 313

The amendments to the law in 1923 were within the right of the legislature to amend the law and are therefore valid.

In re Nose, 195 Cal. 91

This law in effect creates and recognizes two classes of aliens--those who may and those who may not become citizens. The law is not arbitrary or unreasonable because it does not prevent aliens eligible to citizenship, but who have not sought citizenship, from owning or holding land.

Porterfield v. Webb, supra

Japanese have been held not to be "free white" persons or persons of African descent and they are therefore not eligible to United States citizenship.

Terrace v. Thompson,
274 Fed. 841

In re Yamashita,
70 Pac. 482

In re Saito,
62 Fed. 126

Morrison v. California,
291 U. S. 82

So have Japanese of one-half and one-quarter blood been held not to be "free white" persons or persons of African descent, and they, too, are therefore held not to be eligible to United States citizenship.

In re Young, 195 Fed. 645

In re Young, 198 Fed. 715

In re Knight, 171 Fed. 299

The right of Japanese to hold or own land is dependent upon the Treaty of Commerce and Navigation between the United States and Japan (37 Stats. at Large 1504), which was proclaimed April 5, 1911. The provisions of this Treaty are not violated by the law.

Porterfield v. Webb, supra

Frick v. Webb, supra

Japanese aliens can own no land in the United States for any purpose since no right of land ownership is granted to them by the Treaty between the United States and Japan.

People v. Osaki,
209 Cal. 169

Nor does the Treaty or any law entitle a Japanese citizen to own, possess or use land in the United States for the purpose of agriculture.

People v. Osaki, supra

Dudley v. Lowell,
201 Cal. 376

Morrison v. California, supra

However, the Treaty does authorize Japanese citizens to lease land for residential and commercial purposes. Cases have specifically held that Japanese may lease land for health

resort, hospital and garage purposes.

State v. Tagami,
195 Cal. 522

Tashiro v. Jordan,
201 Cal. 236

Gonzales v. Ito,
12 Cal. App. (2d) 124

The law contemplates the provisions of the Treaty with Japan which was in existence at the time the law was passed. Therefore, no enlargement of Japanese rights through future treaties or the elimination of Japanese rights by the recent abrogation of the Treaty of 1911 would in any way affect the Japanese rights under the law.

Kendall v. United States,
37 U. S. 522

In re Heath,
144 U. S. 92

In re Burke,
190 Cal. 326

People v. Frankovitch,
64 Cal. App. 184

The phrase "acquire, possess, enjoy and transfer" has been held to have its simple and usual meaning and it is used in the law for the purpose of preventing aliens not eligible to citizenship from acquiring any interest in agricultural land in this State.

In re Okahara,
191 Cal. 353

Section 3: Rights of Corporations. Forbids corporations and associations controlled by aliens ineligible to citizenship from acquiring or possessing real property or any interest in it, subject to any treaty then in existence between the United States and the alien's nation.

This section has been held constitutional and valid.

Frick v. Webb, 263 U. S. 326

California Delta Farms, Inc. v.
Chinese American Farms, Inc.,
207 Cal. 298

The provisions denying stock-ownership to aliens ineligible to citizenship is constitutional and not in conflict with the treaty between the United States and Japan.

Frick v. Webb, supra

A Japanese owned and controlled corporation may, however, lease land for commercial purposes.

Tashiro v. Jordan, 201 Cal. 236

Section 4: Alien Guardians. Forbids aliens mentioned in section 2 and corporations mentioned in section 3 from becoming guardians of any estate which consists of land which could not otherwise be legally held by the alien or corporation.

This section has been held unconstitutional.

Estate of Yano, 188 Cal. 645

But see Probate Code section 1411, which was adopted after the decision in Estate of Yano, supra, and designed to avoid the constitutional pitfalls pointed out in that case. This section was formerly Code of Civil Procedure section 1751a and was incorporated in the Probate Code in spite of the decision in Estate of Yano, supra, since the Code Commissioners felt that the applicability of the decision in Estate of Yano may have been avoided.

19 Cal. Law Review 623

In the State of Washington a similar law has been held constitutional and valid. The courts of that state expressly declined to follow the rule laid down by the California courts in Estate of Yano, supra.

In re Fugimoto's Guardianship,
226 Pac. 505

Section 5: Trustees. Requires certain reports from trustees having title or control of property belonging to aliens who are ineligible to citizenship or the children of such aliens.

A trust involving real property which is created for the benefit of an alien ineligible to citizenship is a violation of the law.

In re Akado, 188 Cal. 739

A resulting trust will not arise by reason of the fact that an alien ineligible to citizenship pays the purchase price for a parcel of real property which is transferred to his native-born child even though the child be a minor and the father moves upon and uses the property so purchased.

People v. Fujita, 215 Cal. 166

The State alone may challenge a trust on the ground that it was created by an alien ineligible to citizenship in violation of the law.

Shiba v. Chikuda, 214 Cal. 786

Hart v. Nagasawa, 218 Cal. 685

Nishi v. Downing, 21 Cal. App. (2d) 1

Section 6: Heir Ineligible to Take Real Property. Provides for the sale of real property and the distribution of the proceeds if an heir or devisee is ineligible to succeed to any real property.

Section 7: Escheat of Property Acquired in Fee. Provides that lands held in fee in violation of the law shall escheat to the State, except that agricultural land acquired by foreclosure may be held for not to exceed two years.

Title to property conveyed to an alien ineligible to citizenship remains vested in such alien until voluntarily disposed of by the alien or divested by the State through escheat proceedings.

Estate of Yano,
188 Cal. 645

The State alone may question the validity of the transfer of real property and claim that it has escheated to the State.

Hart v. Nagasawa,
218 Cal. 685

Shiba v. Chikuda,
214 Cal. 786

Suwa v. Johnson,
54 Cal. App. 119

Escheat proceedings under this section are not in the nature of a criminal proceeding.

People v. Nakamura,
125 Cal. App. 268

The Code of Civil Procedure lays down the rules of law which are applicable to escheat proceedings.

Code of Civil Procedure,
Sections 1268-1274e

Note that a receiver may be appointed at the commencement of the escheat proceeding.

Code of Civil Procedure,
Section 1270

Not being a criminal proceeding, the rules of evidence applying to civil cases as laid down in sections such as 2055 of the Code of Civil Procedure apply in escheat proceedings.

People v. Nakimura, supra

Section 8: Escheat of Leasehold and Stock. Provides that any interest in land less than fee and stock acquired in violation of the law shall escheat to the State. Property shall be sold to satisfy lien created and any balance shall be paid to parties entitled thereto.

The provisions of this section relative to the escheat of stock held in violation of the section have been held valid by the United States Supreme Court.

Frick v. Webb,
263 U. S. 326

An alien ineligible to citizenship cannot lease land for agricultural purposes.

Porterfield v. Webb,
263 U. S. 225

Terrace v. Thompson,
263 U. S. 197

An alien ineligible to citizenship cannot occupy agricultural lands on a cropping contract.

Webb v. O'Brien, 263 U. S. 313

Dudley v. Lowell, 201 Cal. 376

Cropping contracts which provide for the operation of agricultural lands by an alien ineligible to citizenship on an alleged employment basis or with a bonus arrangement are violations of the law.

Carter v. Utley, 195 Cal. 84

Jones v. Webb, 195 Cal. 88

In re Nose, 195 Cal. 91

Section 9: Conveyance to Prevent Escheat. Provides colorful transfers to defeat the law are void and property shall escheat to the State. Certain prima facie presumptions of fraudulent intent are created and listed.

The provisions of this section are constitutional.

People v. Fujita, 215 Cal. 166

Takeuchi v. Schmuck, 206 Cal. 782

Cockrill v. California, 268 U. S. 258, rpported below in 62 Cal. App. 22

The presumptions of this section apply both to civil and criminal proceedings.

Cockrill v. California, supra

The presumptions of this section are disputable and disappear in the face of evidence sufficient to overcome them.

People v. Fujita, supra

Takeuchi v. Schmuck, supra

The presumptions of this section do not relieve the State of any of the burden of proof in criminal cases.

Cockrill v. California, supra

Section 9a: Burden of Proof of Citizenship. Places the burden of proving citizenship or eligibility thereto upon the defendant in any civil or criminal proceeding instituted under the law when the State has alleged the requisite facts and has proven possession of land or an interest in it.

This section has been declared unconstitutional insofar as it applies to criminal cases but the Court expressly left open the question of its applicability to civil cases.

Morrison v. California, 291 U. S. 82

Section 9b: Defendant Required to Prove Citizenship. Creates a prima facie presumption of defendant's ineligibility to citizenship and places the burden of proving citizenship or eligibility thereto upon the defendant in any civil or criminal proceeding instituted under the law when the State has alleged the requisite facts and has proven possession of land or an interest in it and that the defendant is of a race ineligible to citizenship.

By inference this section has been held constitutional.

Morrison v. California, 288 U. S. 591

Morrison v. California, 291 U. S. 82

But see the article in 22 California Law Review, at p. 420, in which the author points out that the decision in Morrison v. California, 288 U. S. 591, is apparently predicated upon the theory that both defendants were aliens ineligible to citizenship. This section may therefore be unconstitutional in spite of the tacit approval given it in the first Morrison case.

The Court left open the question of the constitutionality of this section insofar as it may be applied to civil cases, so it is unquestionably available for use in connection with escheat proceedings.

Morrison v. California, 291 U. S. 82

Morrison v. California, 288 U. S. 591

Section 10: Conspiracy. Makes it a crime to conspire to violate the law.

Conspiracy to commit the acts forbidden by the law is the only crime provided for in the law. This section contains the only penal provision of the law.

People v. Osaki, 209 Cal. 169

People v. Nakamura, 125 Cal. App. 268

Morrison v. California, 291 U. S. 82

This section states a valid criminal offense which is enforceable under the law.

People v. Osaki, supra

People v. Morrison, 218 Cal. 287

In re Akado, 188 Cal. 739

People v. Cockrill, 62 Cal. App. 22

People v. Entriken, 106 Cal. App. 29

People v. Morrison, 125 Cal. App. 282

People v. Singh, 1 Cal. App. (2d) 729

Acts done to convey land to a corporation, the majority of the stock of which is owned by persons who are ineligible to citizenship, are a violation of the law.

California Delta Farms, Inc. v. Chinese American Farms, Inc., 207 Cal. 298

Knowingly leasing land to an ineligible alien under a fictitious name is a violation of this section.

People v. Entriken, supra

A child old enough to know the nature of his acts may become a conspirator and be liable for a violation of this section.

Babu v. Peterson, 4 Cal. (2d) 276

The accusatory pleading in prosecutions under this section must conform to all of the usual rules applicable to

such pleadings but a slight departure from the wording of the statute will not vitiate the pleading.

In re Akado, supra

People v. Cockrill, supra

People v. Entriken, supra

Likewise the Court's instructions must conform to the usual rules applicable to criminal cases.

People v. Osaki, supra

People v. Cockrill, supra

Section 11: Effect of Act. Provides that the law shall not limit the power of the State to enact other laws on the subject.

Section 12: Repeal Proviso. Repeals all conflicting laws.

Section 13: Amendment. Provides that the legislature may amend this law.

Section 14: Constitutionality. Is the saving clause relative to the constitutionality of this law or any part of it.

TABLE OF AUTHORITIES CONSTRUING THE ALIEN LAND LAW

CALIFORNIA CASES

Takeuchi v. Schmuck, 206 Cal. 782

Tashiro v. Jordan, 201 Cal. 236

Yano, Estate of, 188 Cal. 645

FEDERAL CASES

Cockrill v. California, 268 U. S. 258

Frick v. Webb, 263 U. S. 326
Below, 281 Fed. 407

Jordan v. Tashiro, 278 U. S. 123

Morrison v. California, 288 U. S. 591 (1933)

Morrison v. California, 291 U. S. 82 (1934)

Porterfield v. Webb, 263 U. S. 225
Below, 279 Fed. 114

Terrace v. Thompson, 263 U. S. 197
Below, 274 Fed. 841

Webb v. O'Brien, 263 U. S. 313
Below, 279 Fed. 117

TEXTS AND LAW REVIEW ARTICLES

1 California Jurisprudence Ten Year Supp. (1936) 191

6 California Law Review (1918) 279

10 California Law Review (1922) 241 and 494

12 California Law Review (1924) 259

17 California Law Review (1929) 575

19 California Law Review (1931) 295

22 California Law Review (1934) 420

1 Southern California Law Review (1927) 94

3 Southern California Law Review (1930) 423

F O R M S

FORM OF INDICTMENT

The following is a form of indictment which was successfully used in connection with the case of People v. Entriken, 106 Cal. App. 29:

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF IMPERIAL

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. J. M. ENTRIKEN, GEORGE T. THOMPSON, and YASUZIRO TAKAHASHI, sometimes known as Y. TAKAHASHI, Defendants	No. 2190 INDICTMENT FOR CONSPIRACY TO ACQUIRE THE POSSESSION, ENJOYMENT, USE, CULTIVATION AND OCCUPANCY OF REAL PROPERTY IN VIOLATION OF THE ALIEN LAND LAW OF THE STATE OF CALIFORNIA

THE GRAND JURY, in and for the County of Imperial, State of California, by this Indictment, filed this 23 day of May, 1929, hereby accuses J. M. Entriken, George T. Thompson and Yasuziro Takahashi, sometimes known as Y. Takahashi, of a felony, to-wit, a conspiracy to effect a lease of real property for the possession, enjoyment, use, cultivation and occupancy of and by the said Yasuziro Takahashi, sometimes known as Y. Takahashi, in violation of the Alien Land Law of the State of California, committed as follows, to-wit:

That at all times herein mentioned, the Defendant Yasuziro Takahashi, sometimes known as Y. Takashi, was and is an alien and a native of the Province of Takushima, Japan, and a subject of the Empire of Japan, and was and is an alien resident of the County of Imperial, and was and is ineligible to become a citizen of the United States of America under the laws of the United States of America; that at no time mentioned herein was there, nor is there now, any treaty existing between the United States of America and the Empire of Japan by which a subject of the Empire of Japan was and is permitted to possess, enjoy, use, cultivate and occupy real property in the State of California, or elsewhere in the United States of America, for farming and agricultural purposes, or to have in whole or in part the beneficial use thereof for said purposes:

That at and in the County of Imperial, State of California, and on or about the 20th day of November, 1928, and before the finding of this Indictment, the defendants, J. M. Entriken, George T. Thompson, and Yasuziro Takahashi, sometimes known as Y. Takahashi, did wilfully, unlawfully and feloniously conspire together to evade and violate the Alien Land Law of the State of California, in that the defendant, Yasuziro Takahashi, sometimes known as Y. Takahashi, an alien as aforesaid, desiring unlawfully to secure for himself the possession, enjoyment, use, cultivation and occupancy of certain lands located in the County of Imperial, State of California, and described as the Northeast one-quarter (NE¼) of the Northeast one-quarter (NE¼) of Section 11; Township 16 South; Range 15 East; S.B.B.&M., containing fifty (50) acres more or less, which said land is agricultural and farming land and used and capable of being used for agricultural and farming uses, did, wilfully, unlawfully and feloniously conspire with the defendants, J. M. Entriken and George T. Thompson,and said defendants, J. M. Entriken and George T. Thompson, wilfully and unlawfully and feloniously conspired with the defendant, Yasuziro Takahashi, sometimes known as Y. Takahashi, to secure for the said Yasuziro Takahashi, sometimes known as Y. Takahashi, a lease upon the aforesaid land and to secure for him the possession, enjoyment, use, cultivation and occupancy of the aforesaid land for agricultural and farming purposes and to procure for said Yasuziro Takahashi, sometimes known as Y. Takahashi, in whole or in part the beneficial use thereof, and in pursuance of said conspiracy said defendants did wilfully, unlawfully and feloniously prepare and sign and cause to be prepared and signed a written lease agreement wherein and whereby the defendant Yasuziro Takahashi, sometimes known as Y. Takahashi, was to have for himself the possession, enjoyment, use, cultivation and occupancy of the aforesaid land for agricultural and farming purposes; that the defendant Yasuzior Takahashi, sometimes known as Y. Takahashi, in pursuance of said lease agreement and conspiracy aforesaid, entered upon the above described land and had for himself the possession, enjoyment, use, cultivation and occupancy thereof for agricultural and farming purposes and caused to be planted and grown thereon agricultural crops; that said defendants wilfully, unlawfully and feloniously caused the name of K. Kosuzume, a native Japanese citizen of the United States of America, to be signed upon said lease agreement with the fraudulent and felonious intent and purpose then and there to evade the provisions of the Alien Land Law of the State of California, and to evade and avoid the escheating of said land to the State of California, the said K. Kosuzume not then and there having any interest in said land and not having then and there any interest in said lease agreement or any knowledge thereof whatsoever and said K. Kosuzume never at any time whatsoever having had the possession, enjoyment, use, cultivation and occupancy of the aforesaid land for agricultural purposes or otherwise.

That in pursuance of said confederation, conspiracy and combination, as aforesaid, the said Yasuziro Takahashi, some-

times known as Y. Takahashi, an alien as aforesaid, on or about the 1st day of July, 1928, and including the 17th day of January 1929, did take possession of and enter into the enjoyment, use and cultivation and occupancy of the said agricultural land, and did possess, enjoy, use, cultivate, occupy and farm the same for and to agricultural purposes.

That the aforesaid confederation, conspiracy and combination was not for the purpose of acquiring the possession, enjoyment, use, cultivation and occupancy of the said agricultural and farming land to enforce or aid any mortgage or lien upon or interest in the said land.

Dated this 23 day of May, 1929.

ELMER W. HEALD
Elmer W. Heald, District Attorney
of the County of Imperial,
State of California

.....
.....

FORM OF PETITION FOR ESCHEAT PROCEEDINGS

The following is a form of petition to declare an escheat, which was successfully used in connection with the case of People v. Nakamura, 125 Cal. App. 268:

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

SHOICHI NAKAMURA, G. MIYADA, T. ONO, S. OKU, S. KUROKUA, Y. NAGAHIRO, JOHN DOE, MARY DOE, JOHN DOE COMPANY, a corporation, RICHARD ROE COMPANY, a corporation, RICHARD ROE, MARY ROE, and UNION TRUST COMPANY OF SAN DIEGO, a corporation, PIERRE DELPY, MARIE DELPY, JOSEPH M. W. JOOSTEN and JULES J. DELPY,
Defendants

No. 58429

PETITION TO DECLARE AN ESCHEAT TO THE STATE OF CALIFORNIA

.....

THE STATE OF CALIFORNIA, plaintiff above-named, for cause of action against the above-named defendants, alleges:

I.

That during all of the times mentioned in this complaint the defendants G. Miyada, T. Ono, S. Kurokua, S. Oku, and Y. Nagahiro, and each of them were and now are of the Japanese Race, Natives of the Empire of Japan and citizens and subjects of the Empire of Japan and by reason thereof not eligible to citizenship under the laws of the United States.

II.

That the defendant Shoichi Nakamura is of the Japanese Race, and claims that he was born in Hawaii and that he is a citizen of the United States.

III .

That there is no treaty now existing between the Government of the United States of America and the government of the Empire of Japan, by which citizens or subjects of the Empire of Japan, or natives of Japan are permitted to acquire, possess, enjoy, use, cultivate, occupy, transfer, own, or inherit lands for agricultural purposes in the State of California, or to have in whole or in part the beneficial use of agricultural land in the State of California or elsewhere in the United States, nor has there ever been any such treaty at any of the times mentioned in this complaint.

IV.

That U. S. Webb is the duly elected, qualified and acting Attorney General of the State of California and Stephen Connell is the duly elected, qualified and acting District Attorney of the County of San Diego, in the State of California; and that each of them has been informed and verily believes that the property hereinafter described has escheated to the State of California through and by reason of the facts in this complaint alleged.

V.

That plaintiff is informed and believes and on such information and belief alleges:

That on or about the 16th day of June, 1926, said defendants Shoichi Nakamura, G. Miyada, T. Ono, S. Oku, S. Kurokua and Y. Nagahiro purchased the following described real property situate in the County of San Diego, State of California, described as follows, to-wit:

The Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) and the Southeast Quarter (SE¼) of the Northwest Quarter

(NW¼) of Section Seventeen (17), Township Eleven South (Tp 11S), Range Three West (R3W), San Bernardino Meridian (SBM), subject to right of way for road purposes over the West forty (40) feet of the Northeast quarter (NE¼) of the Southwest Quarter (SW¼), as conveyed by Pierre and Marie Delpy, husband and wife to Charles F. Humphrey and Ada A. Humphrey in Book 1159 at page 316 of Deeds.

VI.

That on or about said 16th day of June, 1926, said real property was conveyed to said defendant Shoichi Nakamura by Pierre Delpy and Marie Delpy, by grant deed, wherein the said Pierre and Marie Delpy were named grantors and the said Shoichi Nakamura was named grantee.

VII.

The plaintiff is informed and believes and on such information and belief alleges:

That on or about June 16th, 1926, said defendants Shoichi Nakamura, G. Miyada, T. Ono, S. Oku, S. Kurokua and Y. Nagahiro paid said Pierre and Marie Delpy the sum of $6000.00 on account of the purchase price of said real property. That on or about July 7th, 1927, said defendants G. Miyada, T. Ono, S. Oku, S. Kurokua and Y. Nagahiro made a further payment of $3342.63 to said Pierre Delpy on account of the purchase price of said real property and on or about July 16th, 1928, said last named defendants made a further payment of $1785.00 to said Pierre Delpy on account of the purchase price of said real property.

VIII.

That said real property hereinbefore described is and at all times herein mentioned has been agricultural land, and at all times herein mentioned has been used for agricultural purposes.

IX.

That upon the execution and delivery of the deed of said lands as hereinbefore alleged, to-wit, on or about June 16th, 1926, said defendants G. Miyada, T. Ono, S. Oku, S. Kurokua and Y. Nagshiro entered into the possession of said real property hereinbefore described and ever since said date have occupied and do now occupy, use, enjoy, and cultivate said lands as their own and ever since said date have had in their own right the beneficial use and enjoyment of said lands for agricultural purposes, and the beneficial use of the crops grown thereon.

X.

That said purchase of said property and the deed taken in the name of said defendant Shoichi Nakamura is a mere subterfuge and cover for the transaction of the said defendants, and is a fraud

upon the people of the State of California, and that by reason of the premises the said State of California, the plaintiff herein, is entitled to have said property declared escheated to the said State of California.

XI.

That all of said acts hereinbefore alleged were done by said defendants Shoichi Nakamura, G. Miyada, T. Ono, S. Oku, S. Kurokua and Y. Nagahiro, wilfully, knowingly and with the intent to violate the Alien Land Law of the State of California and with the intent to prevent, evade and avoid escheat as provided therein and by means whereof said G. Miyada, T. Ono, S. Oku, S. Kurokua and T. Nagahiro, did unlawfully and in violation of said Alien Land Law of California obtain the possession, use, occupancy, ownership and enjoyment of said agricultural lands hereinbefore described, and ever since said date of June 16, 1926 have had, owned, possessed, used and enjoyed, cultivated and occupied said lands, and do now have, own, possess, use, cultivate, occupy and enjoy said lands for agricultural purposes.

XII.

That by reason of the facts hereinbefore alleged the said real property hereinbefore described has been acquired and is now held by said G. Miyada, T. Ono, S. Oku, S. Kurokua and Y. Nagahiro in violation of that certain Statute of the State of California commonly known as the Alien Land Law, submitted by initiative, proposed to and adopted by the People of the State of California at the general election of November 2nd, 1920, entitled "An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this State, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holders to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith," as amended. That all of said property hereinbefore described has escheated and is escheated to the State of California.

XIII.

That the said defendants Union Trust Company of San Diego, a corporation, Pierre Delpy and Marie Delpy, Joseph M. W. Joosten, Jules J. Delpy, John Doe, Mary Doe, John Doe Company, a corporation, Richard Roe Company, a corporation, Richard Roe and Mary Roe have or claim to have some right, title, interest and claim in or to said real property adverse to the plaintiff the nature and amount of which is unknown to the plaintiff, and are necessary parties to the determination of this action.

XIV.

That the true names of said defendants John Doe, Mary Doe, John Doe Company, a corporation, Richard Roe Company, a corporation,

Richard Roe and Mary Roe are unknown to the plaintiff, and it therefore sues them by such fictitious names and when the true names of said defendants are discovered it will ask that this complaint be amended by inserting the true names of such defendants.

XV.

That the defendant Union Trust Company of San Diego, is a corporation duly organized under the laws of the State of California.

That the defendant John Doe Company is a corporation organized under the laws of the State of California and that Richard Roe Company is a corporation organized under the laws of the State of _____.

WHEREFORE, the plaintiff prays that it be adjudged and decreed that the said real property and the whole thereof has escheated to the State of California as of the date of June 16th 1926, and is now the property of the State of California, and that the defendants Shoichi Nakamura, G. Miyada, T. Ono, S. Oku, S. Kurokua and Y. Nagahiro be forever barred from asserting any claim, right, or title in or to said premises or any part thereof as against the State of California, that the interest, if any, of the other defendants herein be determined, and for such other and further relief as to the Court may seem meet and just in the premises.

U. S. WEBB, Attorney General of the
State of California,
STEPHEN CONNELL, District Attorney
of the County of San Diego,
State of California,

By E. I. Kendall
Deputy District Attorney

Attorneys for Plaintiff

NOTES ON THE PREPARATION AND PROSECUTION OF PROCEEDINGS UNDER THE ALIEN LAND LAW

In connection with the preparation and trial of cases under the Alien Land Law, the experiences of the Honorable Elmer W. Heald, District Attorney of the County of Imperial, as expressed in his letter addressed to the Attorney General under date of February 18, 1942, will be most helpful to any District Attorney who has not had previous litigation under this Law. The pertinent portions of his letter are as follows:

"(1) Subterfuge used to violate the law:

Under this heading I would say that in this county the most flagrant violations appear to be carried out under the guise of a lease made to a Japanese citizen. The land owner usually makes a lease with a Japanese born in this country, in many instances this Japanese is the wife of the alien Japanese, or one of his children, or it may even be a citizen Japanese in no way related to the alien Japanese farmer actually engaged in the farming and tilling of the property in question. In some few instances I have found where the lessee whose name appears in the written lease agreement, is a Mexican, Filipino, or white person. In practically all of these cases the citizen Japanese does not live upon the land, and in many instances the citizen Japanese does not even live in Imperial County. The only exceptions to this statement are in those cases where the tenant is the wife of the alien Japanese or the native born child of the alien Japanese. In every instance, however, the land is actually being farmed by an alien Japanese who receives a share or a portion or an interest in the crops produced upon the land and the proceeds received from the sale thereof. There is another type of case which appears to be quite prevalent in this county. I refer to that type of violation wherein the owner of the land or the person farming the land employs an alien Japanese who is designated "foreman'. This alien Japanese is supposed to receive a stipulated salary payable monthly or semi-monthly. Careful investigation, however, discloses that in this type of case the alien Japanese receives a share of the crop or the proceeds received from the sale thereof. This he receives either as a so-called 'bonus' or as his part of the crop. In addition to the foregoing there are the so-called guardianship cases. In these cases an alien Japanese purchases land in the names of his minor children and through Court proceedings has himself appointed as the guardian of his minor children, and under this subterfuge he immediately proceeds to farm large tracts of land.

"(2) Securing of evidence:

This has always been a very difficult task under the terms and provisions of the Alien Land Law, however, I am very much encouraged by the results which we have obtained in my investigation, since my return to Imperial County, and I believe that we are not going to have much difficulty in establishing a case of escheat under the provisions of the Alien Land Law. In practically every instance we have been able to obtain the original copies of the agreements between the owner of the land and the alien Japanese, and our questionnaires contain facts and information which will make it possible for us to establish an escheat case. In a criminal case it will be rather difficult to procure satisfactory evidence upon which to base a criminal prosecution. Under the provisions of the law and the decisions of the courts, it will be necessary for the prosecution to prove, beyond a reasonable doubt and to a moral certainty, that the alien Japanese is in fact an alien ineligible to citizenship under the laws of the United States. The courts may be a little more liberal on their rulings on this phase of the trial under present conditions, and I believe that a criminal case can be established by using the testimony of the persons to whom the Japanese made statements, as to the place of his birth, the date of his birth, and the date of his entry into the United States; and I have always felt that you could use a defendant himself as an Exhibit in the case if necessary, and the jury by observing the defendant could themselves arrive at the conclusion that he was in fact an alien Japanese. In all of the prosecutions handled under the Alien Land Law in Imperial County, we procured most of our evidence by Grand Jury subpoenaes. We subpoenaed the land owners and the alien farmer into court and compelled them to produce all leases, cropping contracts, etc., which they had in their possession. I employed competent investigators who made a very thorough and exhaustive investigation of the entire case before same was ever even presented to the Grand Jury, and we had a fairly accurate idea of the evidence available before the case was started.

"(3) Preparation of the case for trial:

In every instance I have prepared a very comprehensive trial brief divided into two parts: First, Evidence; Second, Legal Points Involved. This is necessary because the courts are not very familiar with this particular type of criminal trial, and it becomes the duty of the District Attorney to practically educate the trial judge on both the law and evidence, consequently the District Attorney must prepare his case very carefully in advance.

"(4) Use of evidence and proof of case at trial:

Under the terms of the Alien Land Law, it is necessary to charge and prove a conspiracy to violate said law. The

"prosecution must allege and prove at least one overt act. The defense always attempts to compel the District Attorney to prove the existence of the conspiracy at the very outset of the trial; however, the courts have repeatedly held in California that the District Attorney may present his case in accordance with his own pre-arranged plan of procedure so long as he assures the trial court that when all of the evidence has been finally presented, the existence of the conspiracy will have been established by a proper proof. Generally speaking a conspiracy under the Alien Land Law is handled in about the same manner as any other conspiracy prosecution.

"(5) Enforcement problems after judgment:

My experience has been that the trial judges have been influenced to some extent by the apathy of the people themselves. The Alien Land Law has been a very unpopular law throughout the State of California, and I would say that approximately fifty per cent of the people in this county have been opposed to the enforcement of this Statute. This has been reflected in the jury panels. The courts therefore have been very lenient in imposing sentences. Under present conditions, however, it is my belief that the courts will enforce the law after a conviction is procured."

The primary purpose of proceedings under the Alien Land Law is to remove ineligible aliens from land which they are not entitled to hold. This is particularly true when the land is held by enemy aliens. While there are no court decisions on the subject, it would appear that the State is entitled, under Code of Civil Procedure Section 1270, to have a receiver appointed at the commencement of escheat proceedings. The appointment of a receiver would, of course, result in the removal of the alien from the land at the outset.

As a possible source of evidence in Alien Land Law cases, the taking of the defendant's deposition under Section 2021 of the Code of Civil Procedure in escheat cases should not be overlooked. A refusal by the defendant to testify on the ground of self-incrimination would appear to be reason enough for believing that a crime had been committed and that a Grand Jury investigation was warranted.

We have received a number of valuable suggestions as to other sources of information and evidence to prove the true ownership and control of land in Alien Land Law cases. These include the records of governmental soil-conservation and crop-proration agencies, the Federal Land Bank, census reports, records of seed, fertilizer and spray sales organizations, and the billing of water and power for the property.

Section 5 of the Alien Land Law requires all trustees who have the title, custody or control of property, or some interest therein, belonging to an alien ineligible to citizenship, or to the minor child of such alien, to file annually with the Secretary of State and in the office of the County Clerk of each county in which any of the property is situated, a verified written report showing: the property held; the date each item of property came into his possession; and an itemized account of all expenditures, investments, rents, issues and profits in respect to the administration and control of said property. These reports must be verified and may prove to be a useful source of evidence. From information we have received, we think that in a considerable number of cases the reports will show on their face that the trust is a mere subterfuge and actually violates the statute.

San Francisco, California,
February 27, 1942.

EARL WARREN,
Attorney General of the
State of California,

By SHERRILL HALBERT,
Deputy Attorney General

Revised - note reverse side

Reprinted from information booklet "Amendments to Constitution", General Election Nov. 5, 1946

VALIDATION OF LEGISLATIVE AMENDMENTS TO ALIEN LAND LAW. Senate Constitutional Amendment No. 17. Amends Section 17, Article I of the Constitution. Establishes validity of 1923 and 1943 legislative amendments to initiative measure of 1920 commonly referred to as the Alien Land Law.	YES NO

Argument in Favor of Senate Constitutional Amendment No. 17

This amendment merely validates statutes pursuant to the Alien Land Laws heretofore enacted by the Legislature and now in full force and effect.

Its enactment by the people will close loopholes in legislative enactments based on constitutional grounds.

It is well known that Japanese aliens, in order to conceal true ownership of property, have indulged in all manner of subterfuges. These aliens have resorted to the use of "dummy" corporations, American-born Japanese children and other nefarious schemes and devices that, on the record, conceal the true identity of the owners of property.

It was through such evasion and subterfuges that Japanese aliens were enabled to own, occupy and control land adjacent to vital areas and industries prior to, and for a considerable time after, the sneak attack by the Imperial Japanese Government on Pearl Harbor.

The equities and rights in property of American-born Japanese are fully protected by the enactment of this constitutional amendment, provided that such American-born Japanese are innocent of any wrongful use or control of such property by alien Japanese.

The laws validated by the enactment of this constitutional amendment by the people protect honest ownership while making it possible to more easily detect dishonest ownership.

Only powerful political and selfish economic interests allied with alien Japanese will oppose the adoption of this validating constitutional amendment.

A "Yes" vote on this amendment will validate the statutes that the Legislature has heretofore enacted into the law of the State of California in compliance with the mandate from the people as contained in the initiative Alien Land Law.

JACK B. TENNEY, Senator, Los Angeles County
HUGH M. BURNS, Senator, Fresno County

Argument Against Senate Consitutional Amendment No. 17

Why pass something that you may not understand? No voter should be asked to vote on a noticeably ambiguous amendment to the State Constitution. For an intelligent decision the Alien Land Law and its various sections, as well as the amendments to be ratified, should appear in this booklet. Voters should not be kept in the dark.

What does Proposition 15 signify? It is a calculated attempt to validate discrimination against Koreans, Indonesians, Siamese and Japanese. Some legal authorities believe that the Alien Land Law amendments would validate discrimination, even against those who have recently been granted naturalization rights, namely, Chinese, Filipinos and East Indians.

What motivates Proposition 15? Proponents ask in effect to make race discrimination constitutional. Elaborate enactments, such as this proposition, have no place in a State Constitution /, which should deal only with fundamentals./. If Proposition 15 is adopted it will still further clutter up a Constitution already overburdened with wordy amendments.**

** Prof. Radin suggests deletion of last sentence.

Proposition 15 seeks to inject outdated legislation into the State Constitution. The Alien Land Law and the 1923 amendment were intended to stop ownership of real property by "aliens ineligible to citizenship". Since 1924 "ineligible aliens" have been excluded from immigration to the USA.

Proposition 15 amendments were originally directed against "aliens ineligible to citizenship" in order to remove them as a competitive threat. Such aliens who came to California before 1924 and are still living, number but a few thousand--including females--their average age, 65. They can hardly be deemed a "threat".

Proposition 15 amendments reinforce the Alien Land Law, which today constitutes the basis of the escheat suits to seize lands and homes of American GI's of Japanese ancestry. The outstanding war record of 25,000 Japanese Americans has earned the right to fair play and decent treatment for themselves and their families. The 442d Regimental Combat Team of Japanese Americans was our most decorated task force. Pacific Area commanders have lauded the contributions of Japanese American Military Intelligence in shortening the war with Japan and in saving hundreds of thousands of American troops.

Proposition 15 undertakes to insure the legality of court action to forfeit and escheat all land now held by Japanese Americans. In view of such unfairness, if Proposition 15 is passed, the 60 escheat suits now pending against Japanese American farm properties will, if lost by the owners, enable interested parties to acquire valuable farm lands. The suits are widely attributed to the desire of such parties to harass the owners and force down prices.

Proposition 15 is opposed by:

Chester H. Rowell.....San Francisco Chronicle
Monroe E. Deutsch.....Vice-President, University of California
Ray Lyman Wilbur.....Chancellor, Stanford University
Alfred J. Lundberg.....
Lynn Townsend White, Jr.....President, Mills College
Frederick J. Koster.....
James K. Moffitt.....
Max Radin....Professor, [Jurisprudence,] University of California
Rt. Rev. Edward L. Parsons.....
Richard R. Perkins.....President, Commonwealth Club
Galen Fisher.....[Former Director, Rockefeller Institute of Social and Religious Research]

JOE GRANT MASAOKA, Regional Representative
Japanese American Citizens League

Note: Portion in brackets [ ] added subsequent to printing of booklet.

from Shoemaker
asst. D.A. W.4

Earl Warren
Attorney General

STATE OF CALIFORNIA
Legal Department

San Francisco, February 3, 1942

Honorable John F. Dockweiler
District Attorney of Los Angeles County
Los Angeles, California

Dear Sir:

It is of vital importance that precise information concerning the location of all lands owned, occupied, or controlled by Japanese be available for use in the discussions between this office and the United States military authorities and other Federal agencies concerning the Alien Land Law and related problems connected with the presence of Japanese in this State. Accurate knowledge of the location of such lands with respect to military establishments, airports, war industries and vital utilities is of course of particular importance. The information required includes the location of all lands owned, occupied or in the control of persons of the Japanese race, including those who are American citizens as well as those who are aliens.

For the purpose of compiling this information and illustrating in graphic form the location of such lands with respect to military establishments and other objects of interest, we are supplying you with a copy of the General Highway Map of the county prepared by the Department of Public Works, these maps being the most recent and informative maps available covering all parts of the State. You will note that these maps already have indicated upon them many important installations, such as power plants, radio stations, lines, bridges and tunnels, airports and the like. However, since the printing of these maps additional installations of like character may have been made. If such is the case it is requested that they be added to the maps and also that the boundaries of the military encampments within the county, if any there be, be indicated thereon.

All property which is owned, controlled or occupied by persons of the Japanese race, whether citizens or not, should be marked on the maps in red. The scale of the General Highway Map is too small to permit the location of city lots. It is therefore requested that you obtain a separate city map for each city and indicate thereon, in red, such lots or other

lands as may be in the hands of members of the Japanese race, also locating on the city maps such establishments as the city hall, gas plant, hospital, water reservoir, water plant, airports, freight yards, power substations, power transmission lines, sewer plant, telephone exchange and war industries. It is realized that the preparation of city maps may take some time and we therefore request that the general highway map of the county be completed as far as possible and sent to us without waiting for the completion of the city maps.

A considerable amount of information concerning the location of properties in the hands of Japanese is, we believe, already available in a number of counties, some work along this line having already been commenced by several different local officers and agencies. In order that you may have the advantage of what work has already been done and also make sure that no Japanese-owned or controlled property is overlooked, we request that you check the sources of information on this subject with the following:

1. County Assessor
2. City Assessors
3. County Agricultural Commissioner
4. Sheriff
5. Chiefs of Police
6. Such other sources of information as are known to you to be reliable, such as land departments of oil companies with large holdings in the oil fields or concerns engaged in businesses requiring them to be familiar with the occupants of various tracts as such dealers in farm implements, insecticides, etc.

In places where some investigation of the lands in the hands of Japanese has already been made, there may also be available some information about the persons in control, such as their names and citizenship. This information will be useful, though it is not essential, and we request that the completion of the maps be not delayed in order to secure information of this sort. However, if any such information is already at hand, we suggest that such persons and the information concerning each be listed and numbered and the numbers placed on the map in their respective parcels.

Similar maps are being prepared for other counties covering all areas of the State within 150 miles of the Coast. At the moment of writing there is only one set of maps covering the total area involved which is available. However, a second set will be made up within the next few days and another copy of the maps covering your county will be sent to you so that you will have a duplicate for your own use.

While the preparation of this map will of course be useful in connection with the survey now being made of Alien Land Law violations, it is of course not a substitute for such a survey as the map will include all lands in the hands of persons of the Japanese race, even those in the hands of American citizens of Japanese descent.

It is, of course, desirable that the preparation of these maps and the compilation of the information shown thereon be kept as secret as possible. We regard the speedy completion of the maps as extremely important and request that as soon as the map is complete it be sent to the Office of the Attorney General in San Francisco by whatever means is quickest.

Very truly yours,

EARL WARREN, Attorney General

By

WARREN OLNEY
Assistant Attorney General

WO:ED

Warren - Attorney-General's Opinion

No. ~~XB~~ NS - 4083

W.1

February 7, 1942

Honorable Thomas A. Maloney
Assemblyman, Twentieth District
405 Montgomery Street
San Francisco

Dear Sir:

I have before me your letter of February 5, 1942 reading as follows:

> "My office is besieged with constituents of mine in the Latin Quarter, who seek my advice as to whether the action recently taken by the Personnel Board, with reference to descendants of nationals of countries with which the United States is at war, will operate against naturalized American citizens of German and Italian birth and against American born citizens of the first generation, whose parents, whether naturalized or not, came from either of these countries. If so, is such action legal?
>
> "I would be very thankful to you for an early reply."

I have been unable to secure a copy of the order of the Personnel Board for the reason that the minutes of the Board have not yet been made public. However, instructions issued under the direction of the Board to its staff state that the Board's actions applies to and will eventually be enforced against all naturalized citizens and native born citizens who are descendants of nationals of countries with which we are now at war, which includes American citizens of German and Italian birth and their children who are citizens of this country by birth. It is then stated that it will first be invoked against applicants of Japanese extraction. By said memorandum, the Staff of the Board is directed, in administering the civil service system of the State,

1. to refuse to take action necessary to permit such citizens to take civil service examinations,

2. to refuse to certify such citizens for State employment, where their names are on eligible civil service lists after qualifying therefor by an examination,

3. to withdraw the names of such citizens from any certifications for employment that have been already made, and

4. to investigate all such citizens who are now employed by the State.

This order will vitally and adversely affect a tremendous number of both naturalized citizens and native born citizens whose loyalty no one has the right to question without affirmative proof of disloyalty. It attempts to establish different degrees of loyalty and in so doing discriminates against naturalized citizens and citizens by birth of the first generation, in favor of those citizens whose forbears have lived in this country for a greater number of gen rations. Such distinctions are neither recognized nor sanctioned by any provision of the Constituion or by any law, and unquestionably constitue a violation of the civil liberties guaranteed to all citizens by the fundamental law of our land.

OVER

In addition to the fundamental questions of rights of citizenship and civil liberties involved, this order is in direct opposition to the letter and spirit of our Civil Service statues which contemplate an opportunity for public service by all citizens on equal terms. Particularly does this appear when the order is examined in the light of the most recent action of the Legislature on the subject, namely the addition in 1941 of section 201.5 to the Civil Service Act of this State, which reads:

> "In applying the provisions of this act or in doing any of the things provided for in this act it is unlawful to require, permit or suffer any notation or entry to be made upon or in any application, examination paper or other paper, book, document or record indicating or in any wise suggesting or pertaining to the race, color or religion of any person whomsoever."

A substantial portion of the population of California consists of naturalized citizens and citizens born of parents who migrated to this country from foreign lands. They have in the past and do now represent the highest standards of American citizenship. Many of them are now in the armed forces of our Government. Some have already given their lives in our cause. Many of them--the naturalized citizens--left the countries of their birth for the express purpose of acquiring American citizenship because of their hatred of the tyrannies which we are now fighting. This has intensified their appreciation of American citizenship and increased their loyalty. To question that loyalty or place them in a category different from other citizens is not only cruel in its effect upon them but is also disruptive of the national unity which is so essential in these times.

It is my conclusion that said order, discriminating as it does against naturalized citizens and against American born citizens of the first generation, violates the civil liberties of citizens as guaranteed by the Constitution of the United States and of this State and is in conflict with our Civil Service Act.

Very truly yours

Earl Warren
Attorney General

W.2

San Francisco, February 17, 1942

Honorable Dwight W. Stephenson
Director, Department of Professional
and Vocational Standards
Business and Professions Building
Sacramento, California

Dear Sir:

I have your communication reading in part as follows:

"It appears that some question has arisen with reference to that Federal statute known as 'Trading with the Enemy Act' and its application to the issuance of licenses to nationals of countries now at war with the United States.

As you perhaps know, licensure in agencies of this department is not restricted to citizens of this country, but citizens of all countries are permitted to acquire licenses if they meet the other qualifications of the respective statutes.

We desire to know whether or not any of the provisions of the above-mentioned act have any direct bearing upon the activities of this department.

1. Would we be in order to withhold the issuance of a license to an individual who had the other qualifications but who is a citizen of an enemy country?

2. Would we be required under the law to issue a renewal of a license to a citizen of an enemy country who had heretofore acquired his original license under the provisions of our law?

If either of the above would be considered as 'Trading with the Enemy' will you please advise us the proper procedure to be followed in handling such matters."

1-NS4108

Section 3(a) of the Trading with the Enemy Act (Chapter 106, 40 Stats. 411, as amended to December 18, 1941) prohibits trading with the enemy or ally of enemy of the United States, except under license, and reads as follows:

"Section 3. That it shall be unlawful

(a) For any person in the United States, except with a license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy."

Section 2 of said Act defines "enemy" to include three groups. The first group includes persons and corporations resident within the territory of any nation with which the United States is at war, or resident outside the United States and doing business within such territory; the second group includes enemy nations or any political or municipal subdivision thereof, or any officer, official, agent or agency thereof; and the third group includes

"Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'enemy.'"

The term "ally of enemy" is similarly defined in section 2 of said Act.

The words "to trade" as used in the Act shall be deemed to mean

> "(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.
>
> (b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.
>
> (c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.
>
> (d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.
>
> (e) To have any form of business or commercial communication or intercourse with."

It thus appears that individuals who are natives, citizens or subjects of any nation with which the United States is at war or which is any ally of such nation, residing in the United States, are "enemies" or "allies of enemies" only when the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, shall by proclamation include such persons within the term "enemy" or "ally of enemy".

Our search does not disclose any such presidential proclamation to date.

Under the authority vested in him by section 21 of

Title 50 of the United States Code, pertaining to alien enemies, but dealing with a subject-matter entirely different from that of the Trading with the Enemy Act, the President, on December 7 and 8, 1941, promulgated Proclamations Nos. 2525, 2526, and 2527, prescribing the conduct to be observed by and toward natives, citizens, denizens or subjects of Japan, Germany and Italy, respectively, being of the age of fourteen years and upward, who shall be within the United States or within any territory in any way subject to the jurisdiction of the United States and not actually naturalized.

These proclamations charged the Attorney General of the United States with the duty of executing all of the regulations issued thereunder, prohibited possession of specified articles, prohibited travel by air, and generally prescribed the conduct to the observed by said alien enemies.

In my opinion, however, these proclamations are not, nor do they purport to be, an exercise of the power granted to the President by section 2 of the Trading with the Enemy Act in defining the terms "enemy" and "ally of enemy".

While there has been a difference of opinion on this subject by certain of the local Federal authorities, we have just received a statement of the United States Attorney General wherein he advises that no presidential proclamation has been issued to date under section 2 of the Trading with the Enemy Act. In referring to the proclamations of December 7 and 8,

1941, above mentioned, he states:

> "These proclamations were issued under the authority granted by section 21 Title 50, U.S.C., and careful note should be taken of the fact that they are not in any way an exercise of the power vested in the President by the above mentioned section 2(c) of the Trading with the Enemy Act."

On September 1, 1920, the Acting Attorney General of the United States rendered an opinion (Vol. 32, Op. Atty. Gen., p. 289) to the effect that enemy nationals residing in the United States are not "enemies" within the meaning of the Trading with the Enemy Act unless and until they have been designated as such by presidential proclamation.

I conclude, therefore, that natives, citizens or subjects of any nation with which the United States is at war or of any nation which is an ally of such nation, residing in the United States, have not to date been proclaimed either enemies or allies of enemies, and that trading with such persons does not fall within the inhibitions of section 3(a) of the Trading with the Enemy Act.

I have also considered the provisions of section 5(b) of said Act, and Executive Order No. 8389, issued pursuant thereto on April 10, 1940, by the President, the effect of which is to prohibit certain transactions by or on behalf of or pursuant to the direction of a "national" of a foreign country or involving property in which such "national" has any interest, unless specifically authorized by the Secretary of the Treasury. Among the transactions prohibited are:

"All transfers, withdrawals, or expectations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States." (Sec.1E, Ex. Or. No. 8389.)

Section 5E of said Executive Order No.8389, as amended, defines the term "national" to include

"Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order."

If the activities permitted by the license which is sought are prohibited by section 5(b) of said Act and said Executive Order No. 8389, a license from the State could serve no useful purpose and would only purport to authorize activities of the licenses which violate the laws of the United States. Under such circumstances the licensing agency should deny an application for such a license or for a renewal of any such existing license.

Whether the conduct of the particular business or profession proposed to be engaged in by a "national" applying for a license from your department may involve transactions within the meaning of section 5(b) of the Trading with the Enemy Act or said Executive Order No.8389, is a question of fact which of necessity must be resolved in connection with each type of license applied for, and such determination should be made by the United States Treasury Department or its agency, the Federal Reserve Bank.

It would appear that in the practice of a profession

or vocation where only the element of personal service is present, yourlicensee would not be engaged in carrying on transactions within the meaning of section 5(b). On the other hand, if your licensee proposes to engage in business transactions of a commercial nature, such activities might well come within the purview of said section.

It is therefore my opinion that the issuance by the various boards within the Department of Professional and Vocational Standards of licenses to nationals of enemy countries residing within the United States is permitted, provided that the particular business or profession proposed to be engaged in by such applicant for license is not prohibited by the Federal authorities, and provided further, that as a condition precedent to the issuance of such license, the applicant proves to your satisfaction that he has complied with any applicable licensing requirements of the United States Treasury Department or other Federal agency concerned.

This conclusion is likewise applicable to the renewal of licenses to such persons.

In this connection I call to your attention the provisions of the various licensing statutes of the State which require proof of the good moral character, honesty and integrity of applicants, or a finding that the issuance of a certain license is in the public interest. Loyalty to this country in time of war is implicit in any such finding, and a failure to

properly weigh and determine any such factors in the issuance of licenses could result in serious consequences to our state and nation.

Very truly yours,

EARL WARREN

RW:YC
WS

Attorney General

(OK'd: JAH, RWH)

8-NS4108

W.5

San Francisco, February 19, 1942

Board of Medical Examiners
1020 N Street
Sacramento, California

Attention: Charles B. Pinkham, M. D.
Secretary-Treasurer

Gentlemen:

I have your request for my opinion whether existing Acts of Congress and proclamations, executive orders or regulations promulgated by or under the direction of the President of the United States pursuant thereto as a result of the declaration of war against certain foreign nations prevent the issuance of new licenses or invalidate licenses heretofore issued by the Board of Medical Examiners to citizens, subjects and nationals of countries with which the United States is at war, who are residing in the United States.

We have advised the Department of Professional and Vocational Standards that the issuance and renewal of licenses pursuant to the Business and Professions Code is not prevented by the actions taken by the Congress and by or under the direction of the President to date, except where the licensed activity is prohibited to "natimnals" of these countries under certain conditions. This opinion fully advises you

concerning the issuance and renewal of licenses issued by you. A copy of such opinion (M84108) is enclosed for your further information.

Your second question, whether licenses already issued are invalidated by Acts of Congress and proclamations, executive orders or regulations promulgated by or under the Direction of the President, is answered in the negative for the reason that said Acts of Congress and said proclamations, executive orders and regulations do not purport to prevent or have the effect of preventing the continuance of the license privileges granted by the State pursuant to its law unless the activities permitted by the license are prohibited to such a national and he is not authorized to conduct them by an appropriate license issued by the agencies of the United States. The considerations for your determination whether the Federal statutes and proclamations apply and whether the licensee has complied with them are the same as those applying to the issuance and renewal of licenses, discussed in said opinion.

Very truly yours,
EARL WARREN, Attorney General

By
J. Albert Hutchinson, Deputy

JAH:ED
Encl.

WSR RWH

A 15.041

OFFICE OF THE
ATTORNEY GENERAL
STATE OF CALIFORNIA

No. 1571

SPECIAL AGENT'S REPORT

DATE February 22, 1942

SUBJECT MR. S. B. SHERMAN
Sheriff, Tulare County Courthouse
ADDRESS Visalia, California TELEPHONE

RE: Reported friction between American and Japanese residents in Tulare County.

STATEMENT OF FACTS

At 9:30 A.M. February 22 Special Agent Griffin interviewed Sheriff Sherman in his office in the Tulare County Sheriff's office. The Special Agent explained to the Sheriff that newspaper reports and other information about the friction pending between American and Japanese citizens had prompted the Attorney General to send the Special Agent to interview the Sheriff and learn the true facts as well as to offer any assistance that the Attorney General could give the County officials.

Sheriff Sherman stated that it was more hysteria than actual trouble; that newspapers were magnifying the words of some of the hot-headed citizens of the county; that he had been receiving for the past several weeks numerous calls of all kinds of suspicious happenings; that he had delegated two men from his office to run down such reports and in every instance they were not founded on facts; that some of these reports even went so far as to report flares being used by the train crews on the railroad tracks at late hours of the night and early morning; that there was no united or assembled groups taking an aggressive attitude toward the problem but a few hot-heads, particularly, a small number in the American Legion had tried to start some trouble but were quickly squelched by other members of the Legion; that the Associated Farmers were not taking any part in the problem.

The Sheriff further stated that there were considerable numbers of Japanese in the county; that on one ranch, the DiGeorgio Ranch, there were 250 Japanese and 150 Filipinos employed; that there were a number of Japanese farmers who have lived there for the past years in the Orosi District, and that other Japanese have recently moved in there; that there were, to his best knowledge, but fifty additional Japanese in the county but that the county citizens did not want any large influx of them to that area; that he never believed the matter was so serious as to get out of hand at any time and now that the Government had taken up the problem he was satisfied that all was going to be peaceful.

At the Sheriff's invitation the Special Agent accompanied the Sheriff while he drove through the northern section of the county, particularly, around the Orosi District, where there are a half dozen Japanese camps. These Japanese at this time plant an early crop of tomatoes up on the hillside which are protected by white paper caps to prevent frost. One particular plot roughly

NO.

REPORT WRITTEN February 25, 1942 SPECIAL AGENT G. W. GRIFFIN

FORM NO. DI-2
4608 9-41 5M SPO

OFFICE OF THE
ATTORNEY GENERAL
STATE OF CALIFORNIA

No. 1571

SPECIAL AGENT'S REPORT

DATE February 22, 1942

SUBJECT MR. S. B. SHERMAN

ADDRESS TELEPHONE

RE:

STATEMENT OF FACTS

one hundred yards by five hundred yards in length does come to a point at its western terminal and does point in the general direction of the bomber base at the Visalia Airport. This point is caused by a fence running diagonally across the bed. The Sheriff said the Japanese for the past several years have planted the identical same bed in the same manner. Also, on this same large mountain side there are other such pointed beds but they do not point toward any air field.

The Special Agent asked the Sheriff who Mr. Wendell Travioli was because this man had on the day previous testified before Tolan Congressional Committee in San Francisco, which was investigating the aliens in California. Sheriff Sherman stated he knew Mr. Travioli and that he was a small cattle raiser in the foothills of the county and was taking this problem very seriously, and while he was a well-meaning citizen he was being carried away with hysteria.

The Sheriff further stated that he was keeping right close to this problem at all times and did not feel that it ever threatened to get out of hand; that he did not believe there would be any large influx of Japanese into the county, but at the same time was happy to know the Attorney General was interested in his problems in the county.

The Sheriff further stated that he thought the District Attorney, Mr. Haight, had been stampeded a little on the problem. He personally had searched numerous Japanese camps for firearms and short-wave radios and in fact had run down the report that a certain influential Japanese in that area had maintained a radio beam on which a local aviator had followed directly over the land and upon his investigation had ascertained that the Japanese had no short-wave radio or sending station of any kind. He further stated that he had personally visited the camp to where the Japanese moved in and told them that they should stay on their own ranch at all times, only sending one person to the store to buy their supplies, and in that way would protect both themselves and himself; that as far as he knew the Japanese had been very cooperative on all his instructions to them, although he did not trust any Japanese whether alien or citizen born.

The Special Agent thanked the Sheriff for his cooperation and in turn the Sheriff stated that he was glad to again see the Special Agent and that he would do anything Attorney General Warren suggested but that he never felt that the problem was very acute.

REPORT WRITTEN February 25, 1942 SPECIAL AGENT G. W. GRIFFIN

FORM NO. DI-2
4608 9-41 5M SPO

NO.

A 15.041

OFFICE OF THE
ATTORNEY GENERAL
STATE OF CALIFORNIA

No. 1572

SPECIAL AGENT'S REPORT

DATE February 22, 1942

SUBJECT MR. WALTER C. HAIGHT
District Attorney
ADDRESS 412 West School Street
Visalia, California

TELEPHONE

RE: Reported friction between Japanese and American Citizens in Tulare County

STATEMENT OF FACTS

At 11:10 A. M. February 22, Special Agent Griffin interviewed District Attorney Haight at his home in regard to the reports that citizens of Tulare County were aroused by infiltration of Japanese. Mrs. Haight also was present during the interview.

The Special Agent informed Mr. Haight that Attorney General Warren was interested in the newspaper report and other information regarding the feeling in Tulare County over the Japanese situation; also, that the Attorney General was vitally interested in the problem and desired in every way to render any assistance possible to Tulare County and its District Attorney. Mr. Haight said he knew the Attorney General was always behind them in their problems and that the feeling had been high in the county up until last Friday, February 20, on which date the news releases stated that the President had empowered the Secretary of War to meet the problem of evacuating enemy aliens from the Pacific Coast under a modified martial law. This proclamation and the facts that the Congressional Committee on the problem was holding meetings at the present time had materially lessened the friction.

Mr. Haight further stated in substance the following: that there had been numerous Japanese families moving into the County during the past thirty days; that he did not know the exact number but estimated perhaps fifty families; that a recent release in a Japanese newspaper in Los Angeles stated that the Japanese were planning a colonization in Tulare County near Strathmore; that the Paula Verdes Corporation had fired all their Japanese employees on their holdings, which are very extensive, and employed numerous Japanese; that the Superintendent of Schools there had written the Tulare County Superintendent of Schools that he knew at least thirty families of Japanese planned on moving to Tulare County and would consequently increase the number of students in school; that two years previously numerous Japanese from the county had applied to the County Clerk for credentials to get their passports and did in fact go to Japan; that practically all of these had returned to Tulare County but the exact names and the number of such Japanese had not yet been ascertained from the County Clerk but that she was working on the problem; that he had had considerable difficulty getting out an accurate map of the Japanese located in the county because the picture had been changing so rapidly, but that he put four men on this job and had already sent the map to the Attorney General; that he was presently planning and endeavoring to get a proper liaison map to circulate among the citizens

NO.

REPORT WRITTEN February 25, 1942 SPECIAL AGENT G. W. GRIFFIN

FORM NO. DI-2
4608 9-41 5M SPO

OFFICE OF THE
ATTORNEY GENERAL
STATE OF CALIFORNIA

NO. 1572

SPECIAL AGENT'S REPORT

DATE February 22, 19 42

SUBJECT MR. WALTER C. HAIGHT

ADDRESS

TELEPHONE

RE:

STATEMENT OF FACTS

of the county and keep in close touch with any antagonism against the Japanese.

It was Mr. Haight's conclusion that following the recent action by the Government and the Congressional Committee's hearings that the citizens now in the County were convinced that the Japanese residents in that county were only temporary and that they were not going to be a dumping ground for the Japanese from the coast area. Further, that there was no one group of people, such as the American Legion or Associated Farmers, banded together to take any action against the Japanese.

Mr. Haight was thanked for his information and was asked that he keep the Attorney General advised of the course taken in the problem by that county.

At the time the Special Agent was leaving Mr. Haight asked who Mr. Neustradt was and the Special Agent stated he did not know. Mr. Haight stated that this man had written to different citizens of the county and had not satisfied them because he was stressing the point that civil liberties must be protected.

NO.

REPORT WRITTEN February 25, 19 42 SPECIAL AGENT G. W. GRIFFIN

FORM NO. DI-2
81340 1-40 7500 TRIP SPO

A15.042
NS4278

EARL WARREN
ATTORNEY GENERAL

STATE OF CALIFORNIA
LEGAL DEPARTMENT

Voting rights in Vallejo housing projects

SUBJECT INDEX
VOTING
RESIDENCE
HOUSING AUTHORITY (US)
AGED AID

San Francisco, May 4, 1942.

Honorable P.B.Lynch
District Attorney of Solano County
Fairfield,California.

Dear Sir:

In your letter of recent date you have requested that I advise you upon the right of persons living in Federal housing projects located in your county to vote as residents of your county. You state the situation prevalent in your county as follows:

"We have apparently three different types of housing projects; one, being built by the Farm Securities Administration, located on land which is not owned by the federal government but is leased from private individuals; another, having been constructed by the Federal Housing Administration on land purchased by the government for that purpose; and a third, having been built by the United States Navy on land purchased by the Navy Department for that purpose.

"All of these housing projects are occupied by men who are at the present time employed on Mare Island Navy Yard as civilian workmen, together with their families. The children attend our public schools and apparently all of them are permanently located in their respective dwellings. They all pay rent to one or another of the above mentioned agencies.

"It would appear to me that they are all entitled to vote, with the possible exception of those located in the project constructed by the Navy Department."

The right to vote at elections held within this

State is one conferred by section 1 of Article II of the Constitution of this State upon all citizens of the United States of the age of twenty-one

> "who shall have been a resident of the state one year next preceding the day of the election, and of the county in which he or she claims his or her vote ninety days, and in the election precinct forty days * * *"

It is generally held throughout this nation that where the United States has acquired exclusive jurisdiction over territory located within the exterior boundaries of the State, persons residing upon such territory, whose sole qualifications of residence are merely such as are acquired by residing therein, do not thereby acquire a residence for voting purposes under constitutional provisions similar to section 1 of Article II.

Herken vs. Glynn, (Kan.) 101 Pac.(2) 946,

and cases therein cited.

However, such is not and cannot properly be the case where the property owned by the Federal Government is not subject to the exclusive jurisdiction of the United States, but is property over which the State has jurisdiction and to which its laws apply. The answer to your question therefore depends in each case on whether the territory owned by the United States and upon which the person resides is subject to the exclusive jurisdiction of the United States. That fact is to be determined by ascertaining the circumstances under which the particular territory was acquired by the United States. You have not furnished these facts with reference to the housing projects located

in Solano County and my reply must perforce be general in terms.

Exclusive jurisdiction over lands situated within a State is commonly acquired by the United States in one of two ways; first, by purchase with the consent of the Legislature of the State "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings" pursuant to Article I, sec. 8, cl. 17 of the Constitution of the United States; and, second, by a cession of exclusive jurisdiction by the State to the Federal government. The consent of the State is usually evidenced by a statute ceding jurisdiction to the United States. In California by Statutes of 1891, page 262, the State of California ceded exclusive jurisdiction to the United States over all land "as may have been or may be hereafter ceded or conveyed to the United States", reserving only the right to administer the criminal laws of this State and to serve civil process therein. By Statutes of 1897, page 51, a similar cession of exclusive jurisdiction was made over "all lands within this State now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes". This cession was upon the condition that a description of the property and a plat thereof should be filed in the proper office of record of the county in which the land was situated, and by the terms of the statute the right to serve civil and criminal process of the State within such territory

was reserved. Sections 33 and 34 of the Political Code of this State contain further cession provisions, and an expression of the consent of the Legislature to the purchase or condemnation by the United States of land "for the purpose of erecting forts, magazines, arsenals, dockyards, and other needful buildings". By Section 34 the right to serve civil and criminal process and to levy and collect taxes is expressly reserved. These sections undoubtedly will be construed as coextensive with clause 17 of section 8 of Article I, Constitution of the United States, and the phrase "other needful buildings" will be construed, in the same manner as that phrase in clause 17, to include "whatever structures are found to be necessary in the performance of the functions of the Federal Government". (James vs. Dravo Contracting Co., 302 U.S. 134, 143; 82 Law. Ed. 155, 163).

It is necessary, then, to determine in each instance the manner in which the particular property was acquired by the United States and what statutes are applicable thereto. The courts of this State have so approached the problem with reference to specific tracts of land situated within this State but owned by the Federal Government. (See People vs. Mouse, 203 Cal. 782 (Veterans Home, Sawtelle); Allen vs. Industrial Acc. Com., 3 Cal. (2) 214 (Fort Miley); Martin vs. Clinton Construction Co., 41 C.A.(2) 35 (Yerba Buena Island); Collins vs. Yosemite Park & C. Co., 304 U.S.

518, 82 Law Ed. 1502; (Yosemite Natl. Park); Standard Oil Co., vs. California, 291 U. S. 242, 78 Law Ed. 775 (Yosemite National Park); Consolidated Milk Producers vs. Parker, Supreme Court of Calif. 19 A.C. 898, March 1942 (Presidio).

You state you are advised that one of the housing projects in Solano County is being constructed by the Farm Security Administration of the United States upon property not owned by the United States but leased from private individuals. Property, the use of which is thus acquired, is not subject to the exclusive jurisdiction of the United States, (City of Baltimore vs. Linthicum, (Md.) 183 Atl. 531, 533, Brooke vs. State, 155 Ala. 78, 46 So. 491; People vs. Bondman, 291 N.Y.S. 213; U.S. vs. Tierney, 28 Fed. Cas. No. 16517) and such property remains subject to the jurisdiction of the State of California save that the latter may not affect the title of the United States or embarrass it in using the lands (Surplus Trading Co. vs. Cook, 281 U.S. 647, 650; 74 Law Ed. 1091, 1094). Persons residing in that housing project are not precluded by such residence from obtaining a residence in California for voting purposes under section 1 of Article II of the Constitution.

With respect to other defense housing projects located in your county, I shall discuss generally the jurisdiction over such projects without reference to the manner in which the particular housing project was acquired, for I have not that information before me. The following

discussion is based upon established principles that acquisition of exclusive jurisdiction by the United States is based upon principles of grant, that acceptance of the grant extended by the State will be presumed in the absence of evidence to the contrary, and that nothing in clause 17, section 8 of Article I requires the United States to accept or exercise exclusive jurisdiction. (James vs. Dravo Construction Co. 302 U.S. 134; Silas Mason Co. vs. Tax Comm. 302 U. S. 186; Atkinson vs. State Tax Comm. 303 U. S. 23; Stewart vs. Sadrakula, 309 U. S. 94.)

Housing projects are constructed and operated by the Navy and War departments for the housing of enlisted men with families, civilian employees of the Navy and War Departments and their families, and workers with families who are engaged in industries essential to national defense, under the authority conferred upon those departments by Public Law 671, June 28, 1940, 76th Congress (54 Stat. 676, 681) and by Public Law 781, Sept. 9, 1940, 76th Congress (54 Stat. 872, 883). In your county, such projects have, I understand, been constructed only by the Navy Department.

Under Section 202a and b of Public Law 671 the Navy Department is authorized to develop projects "on or near naval or military reservations, posts, or bases for rental to the enlisted men and employees of the Navy * * *". Apparently no authority is conferred by that act upon the Navy to maintain

housing projects for workers employed in private industries essential to national defense, such authority being granted only to the United States Housing Authority (Sec. 203).

Public Law 671, enacted June 28, 1940, provides the Navy or War Department may directly develop these housing projects or they may be developed by the United States Housing Authority, whichever is designated by the President. In either case, however, funds are furnished by the U.S.Housing Authority and it is provided that title to the property shall be vested in the Housing Authority.

That statute declares in Section 202(a) that any project developed for the purpose of that section shallbe leased by the Housing Authority to the Navy or War Department and then provides:

> "Notwithstanding other provisions of this or any other law, the Department (i.e. Navy or War) leasing a project shall have the same jurisdiction over such project as it has over the reservation, post or base in connection with which the project is developed."

As to this provision it might appear therefrom it was the intent of Congress to treat such housing projects operated by the Navy or War Department in or near posts and reservations for the housing of enlisted men and civilian employees of the Department as an extension of the post or reservation in conjunction with which they were established and to take the same jurisdiction thereover as was obtained and exercised over the naval or military post or reservation; that is to say, as

such jurisdiction was in the case of most of those posts or reservations, such as the Presidio in San Francisco and Mare Island Navy Yard, a jurisdiction exclusive of the State wherein such post or reservation was located, so it was intended the same jurisdiction should be exercised over any such land so acquired as an adjunct to such post or reservation. On the other hand the view has been advanced that it was the intent of such provision to declare that only as between the various Federal agencies should the Navy or War Department exercise the same jurisdiction over such land so acquired as was exercised by it over such post or reservation to which said land was an adjunct, and that the provision has no relation to any State jurisdiction. I am not aware of any judicial interpretation of said provision and cannot therefore advise you with assurance in relation thereto.

If such provision be applied as first above suggested then the right of persons residing in projects constructed on such lands to vote as residents of the State and County depends upon the jurisdiction of the United States over the post or reservation to which such land or project is an adjunct. In such case if such jurisdiction is exclusive, the jurisdiction of the United States over said land and project is also exclusive and residence thereon is not residence within the State or County for voting purposes. If such jurisdiction is not exclusive, then residence thereon is residence within the State and County for voting purposes.

8-NS4278

On the other hand if such provision be construed as secondly above suggested, that is to say as expressing jurisdiction only as between Federal agencies, then other points are to be considered. If the project was constructed on land acquired under that statute, Public Act 671, and leased to the Navy Department, and was so acquired at a time when the California Statute ceding exclusive jurisdiction thereover would operate thereon then in the absence of any Federal Act expressing an intent not to take such exclusive jurisdiction it would be presumed that such relinquishment of State jurisdiction was accepted by the Federal Government.

At this point it may be noted that Public Act 671 expressly provided that Section 355 of the Revised Statutes shall not be applicable to land acquired under said Public Act 671. Section 355 formerly related only to the necessity of having the Attorney General pass upon the title to lands before acquisition thereof. However, on February 1, 1940, by Public Act 409, 76th Congress (54 Stats. 19), Section 355, of the Revised Statutes was amended, and was again amended by Public Act 825, October 9, 1940, 76th Congress (54 Stats.1083), and as so amended on each of said dates the last paragraph thereof provided:

> "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but

"the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." (Emphasis added)

I am advised that no notice of acceptance pursuant to those provisions of Section 355, as so amended, has been filed by any officer or agency of the Federal Government in connection with the acquisition of land for housing projects. Such being the case and if the land upon which the project was constructed was acquired subsequent to October 9, 1940, then it would appear the provisions above quoted from Section 355 would apply and State jurisdiction would continue over such land so that those residing thereon might acquire a voting residence for State and local elections. This result would also follow if the land acquired pursuant to Public Act 671 was acquired subsequent to October 9, 1940, provided it be not held that the jurisdictional provision therein, and hereinbefore quoted, applies to the States as well as Federal agencies and

being contained in a special act prevails over the more general provision contained in Section 355 of the Revised Statutes.

Under Public Law 781, enacted September 9, 1940, 76th Congress (54 Stats. 872), the War and Navy Departments are authorized to purchase land for housing projects "at locations on or near Military or Naval Establishments, now in existence or to be built, or near privately owned industrial plants engaged in military or naval activities, which for the purpose of this act shall be construed to include activities of the Maritime Commission". The rental of such housing is authorized "to enlisted men of the Army, Navy, Marine Corps with families, to field employees of the Military and Naval Establishments with families, and to workers with families who are engaged, or to be engaged, in industries essential to the military and naval national defense programs * * *." No provision is made in said law requiring that exclusive jurisdiction be obtained over such projects which are not necessarily operated in conjunction with a military or naval establishment. And it appears that the provisions of Section 355 Revised Statutes as amended are applicable. Therefore, I conclude that such projects are, generally speaking, not subject to the exclusive jurisdiction of the United States and residence therein may be residence within the State or county for voting purposes.

11-NS4278

Under both Public Law 671 and 781, the housing project may be constructed upon land theretofore acquired as a military or naval reservation. Thus, I understand, the Navy Department has constructed a housing project on the Mare Island Naval Base. In such a case the construction of a housing project would not affect the jurisdiction theretofore acquired by the United States and the right of persons residing therein can be determined only by ascertaining the nature of the jurisdiction of the United States over the particular military or naval reservation.

By Public Law No. 849, enacted October 14, 1940, 76th Congress, (54 Stats. 1125), commonly known as the Lanham Act, the Federal Works Administrator is authorized to construct housing projects "in order to provide housing for persons engaged in national-defense activities, and their families, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities". Such projects have been and are being constructed in several counties throughout the State, as well as in Solano County. It was clearly never the intention of the Congress of the United States to accept exclusive jurisdiction over the land upon which those projects are situated, for it is expressly provided in section 10 of that Act, the Lanham Act, (42 U.S. C.A. sec. 1547)

> "Notwithstanding any other provision of law, the acquisition by the Administrator of any real property pursuant to this act shall not deprive any State or political subdivision thereof of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants of such property." (Emphasis added)

Recognizing that such property owned by the United States would be exempt from local taxation, although subject to the jurisdiction of the State, the Congress by section 9 of that Act (42 U.S.C.A. sec. 1546), authorized the Federal Works Administrator to

> "enter into any agreements to pay annual sums in lieu of taxes to any State or political subdivision thereof, with respect to any real property acquired and held by him under this Act, including improvements thereon. The amount so paid for any year upon any such property shall not exceed the taxes that would be paid to the State or subdivision, as the case may be, upon such property if it were not exempt from taxation."

Moreover, in addition to these provisions evidencing the intent of Congress to leave the land within the jurisdiction of the State, as that Act was passed October 14, 1940, apparently it was enacted in view of the provisions, quoted above, of section 355 of the Revised Statutes, as amended October 9, 1940, and any land acquired under the Lanham Act would be subject in the matter of jurisdiction to the provisions of said Section 355.

In view of these statutes, it is my opinion that the United States has not acquired exclusive jurisdiction

over housing projects constructed within this State by the Federal Works Administrator. Therefore persons living in such projects may establish a residence within this State for voting purposes by their residence in such a project. To conclude otherwise appears contrary to the very spirit which has prompted the construction of these projects. Available housing facilities have proved entirely inadequate in many areas of this State. Particularly is this true in your county in the vicinity of Vallejo. The demanding necessities of national defense work have drawn many persons to these areas and to hold that a portion of those persons, who, of necessity, are residing in housing projects owned by the United States, are to be treated differently than those residing elsewhere in the area would be unwarranted, unless such conclusion is compelled by express statutory provision or other law.

Other housing projects have been and are being constructed upon land owned by the United States Housing Authority either by that authority or by local housing authorities. Such land is clearly not subject to the exclusive jurisdiction of the United States for it is expressly provided in the act authorizing the acquisition of such property (50 Stat.888, 42 U.S.C.A. sec. 1401-1430) by section 13 (42 U.S.C.A. 141 3(b)):

> "The acquisition by the Authority of any real property pursuant to this chapter shall not deprive any State or Political subdivision

"thereof of its civil and criminal jurisdiction in and over such property, * * *"

In view of this provision, exclusive jurisdiction is not obtained by the United States over such property, and persons making their home therein may obtain a State residence for voting purposes by such residence.

You have also requested that I advise you whether persons living on these projects are eligible for old age assistance. Under section 2160 and 2160.5, Welfare and Institutions Code, residence within the State and County for a fixed period is required as one of the necessary qualifications for old age assistance. That residence is determined in accordance with section 52 of the Political Code and is no different than the residence required under section 1 of Article II of the Constitution for voting purposes. (See Op. NS2894). Therefore, if the person is living in a defense housing project situated upon land owned by the United States, but not subject to the exclusive jurisdiction thereof, that person may have acquired a State and county residence for the purposes of the Old Age Security Law.

In concluding, it should be again emphasized that the question of residence of persons living in defense housing projects is one which depends upon a determination whether the particular housing project is situated upon land within the exclusive jurisdiction of the United States. If so, residence thereon is not residence within this State. But

if the jurisdiction of the United States is not exclusive, persons residing thereon may be residents of this State. This question is one which must be determined in the case of each housing project by an examination of the manner in which the property was acquired by the United States, the statutes under which it was acquired, the statutes authorizing the maintenance of the housing project, and the State statutes applicable to such acquisition.

In addition thereto, once it is determined that a particular housing projett is not subject to the exclusive jurisdiction of the United States, it must be determined whether the residence of the particular person seeking registration as a voter is a permanent residence within the meaning of the statutes of this State defining residence.

Very truly yours,
EARL WARREN, Attorney General

RWH:T
5364

16-NS4278

NS 4278

EARL WARREN
ATTORNEY GENERAL

A 15.041

STATE OF CALIFORNIA
LEGAL DEPARTMENT

San Francisco, July 10, 1942

Honorable Thomas J. Doyle
Assemblyman-45th District
4333 Griffin Avenue
Los Angeles, California

Dear Sir:

By letter of March 31, 1942, you requested that I advise you whether American citizens of Japanese Ancestry who are evacuated from the coastal counties of this State to inland counties pursuant to Presidential Proclamation and upon orders of the United States Army acquire a voting residence in the county to which they are removed. On April 1 I advised you that this question was under consideration with reference to the Reception Center at Manzanar, Inyo County, and that as soon as an opinion was issued with reference thereto a copy would be forwarded to you. As a result of conferences had, it appears no opinion will be required in that instance, and I am therefore addressing you.

Under the provisions of Article II, section 1, of the Constitution of this State every person is entitled to vote who has been a "resident" of the county for ninety days preceding the election, and of the State for one year. By "residence" is meant residence of a permanent character (People v. City of Long Beach, 155 Cal. 604), and to establish such residence it must be shown not only that the per-

1-NS4317

son is physically present, but also that he intends to make such residence his permanent abode (Political Code section 52). The residence referred to is a residence or domicile of choice, and it is well established that a person cannot acquire such residence by any act done involuntarily or under legal compulsion.

Neuberger v. U.S., 13 P. (2d) 541

Stadtmuller v. Miller, 11 F. (2d) 732

Millet v. Persin, 173 N.W. 411

People v. Cady, (N.Y.), 37 N.E. 673

Ferguson v. Ferguson (Ky.), 73 S.W. (2d) 31

Therefore, it is my opinion that since the presence of this group of American citizens of Japanese ancestry within the county is under the compulsion of lawful orders of the government of the United States, they do not acquire, by reason of such presence, a voting residence in the county in which is located the reception center to which they are removed.

Very truly yours,

EARL WARREN

Attorney General

2-NS4317

COPY

Page 5A
INSERT

A 15.042

James Ross, Sheriff

J.D. Ross, Under Sheriff

SANTA BARBARA COUNTY
SANTA BARBARA, CALIFORNIA

Office of the Sheriff

May 13, 1943

Mr. Morton Grodzins,
Research Assistant,
Evacuation & Resettlement Study,
207 Giannini Hall,
Berkeley, California

Dear Sir:

With reference to your letter dated May 11, 1943, regarding the shelling of the coast at Ellwood, this county, I wish to advise that there was no evidence of any activity on the part of Japanese on the shore to aid the attack. There were no arrests made and no Japanese aliens or American-born interned as a result of the attack.

Very truly yours,

/s/ James Ross

Sheriff

JAMES ROSS, Sheriff

J. D. ROSS, Under Sheriff

SANTA BARBARA COUNTY

SANTA BARBARA, CALIFORNIA

OFFICE OF THE SHERIFF

May 13, 1943.

Mr. Morton Grodzins,
Research Assistant,
Evacuation & Resettlement Study,
207 Giannini Hall,
Berkeley, California.

Dear Sir:

With reference to your letter dated May 11, 1943, regarding the shelling of the coast at Ellwood, this county, I wish to advise that there was no evidence of any activity on the part of Japanese on the shore to aid the attack. There were no arrests made and no Japanese aliens or American-born interned as a result of the attack.

Very truly yours,

James Ross

Sheriff.

grodzins Notes

WARREN--PRE-EVACUATION ATTITUDE

State Attorney General Earl Warren's activity on the Japanese question during the pre-evacuation period was largely centered around land ownership or use by alien or native born Japanese. In January of 1942, Warren announced that the California Alien Land Law had been widely evaded to enable alien Japanese to obtain land close to military areas. (Oakland Tribune, 1/21/42) He promised an investigation of such evasions which would be "thoroughgoing, but nevertheless temperate". (Nichi Bei, 1/25/42)

A meeting of all the district attorneys and sheriffs of California was called by Attorney General Warren for February 2 in San Francisco. Warren opened the meeting and stated his purpose in calling the state law enforcement officers together.

> Now gentlemen, to get right down to the purpose of this meeting, I think everyone who has observed...is aware of the danger to our state and has been aware of it long before war was declared, and long before other people in the state could be interested in it. .... I think that anyone who has read the report of Pearl Harbor must realize, if he did not realize it before, that so far as the Japanese are concerned, we have a tremendous problem in California to protect our state against fifth column activities.... California is wide open, gentlemen, to any kind of a fifth column activity and to any kind of sabotage; not only is it wide open to it, but in my opinion is a most attractive field for sabotage from the viewpoint of the Axis powers. We have here the greatest defesnse industries in America. We have here the most vital defense industries in America. We have here the ports that are most important in the Pacific Area, more so than in any other state in the Union.
> .....
> I have discussed the land situation with many of our local authorities and I have found that to my dismay the situation is worse than in many respects I had even believed it to be....
> .....
> It seems to me that it is quite significant that in this great state of ours we have had no fifth column activities and no sabotage reported. It looks very much to me as though it is a studied effort not to have any until the zero hour arrives....
> .....

> I believe that every alien Japanese should be considered in the light of a potential fifth columnist. Now I say that without any desire to create any hysteria of any kind, and I base it entirely upon my reading of Axis warfare and Japanese warfare, and upon the reasoning powers that I have, such as they may be. And I believe that being true that we have no right to sit by with a statute such as the Alien Land Law on our books and permit farming operations, particularly in neighborhoods where it may be destructive to the security of our state and nation. (Proceedings Conference of Sheriffs and District Attorneys Called by Attorney General Warren on the Subject of Alien Land Law Enforcement, pp. 2-7)

Warren then continued with his thesis that if a survey were made of Japanese ownership and use of land that a great deal of information would be accumulated which would retard any contemplated fifth column activities. He stated that he had no desire to fill the jails with Japanese who had been careless in complying with the Alien Land Law but that he did want to get the Japanese off land where they might be dangerous. He suggested that people who had had questionable land transactions be given an opportunity to discuss them with the authorities and if they had merely "gone along with the tide" no action should be taken. However, if the transactions were of a sort which might endager the security of the state, then it should be treated seriously. (Ibid., pp. 8-9)

Mr. Warren concluded his opening remarks in this manner:

> We are now at war with Japan. And her people, with the loyalty they have for their government and for their emperor, are not interested in the welfare of this country. And so it behooves us as law enforcement officers to do whatever we can to see that the provisions of this law are enforced. We come here today to discuss how we can best do that. (Ibid., pp. 12-13)

At the conclusion of Mr. Warren's address, the press was requested to leave.

Throughout the day-long discussion which followed, Attorney General Warren consistently appears as a moderating influence. He appears as the advocate of doing as much as can be done under the laws available and being satisfied with partial success if total success is impossible.

> Chester, I think in this or in any other undertaking,..., we must start with the premise that we are not going to get perfection. We are not going to clean up this situation a hundred per cent any more than we have been able, throughout the years, to stop larceny and burglary and robbery and those other crimes.... And if we can't clean it up a hundred per cent, maybe we can clean it up fifty percent. And if we can't clean it up fifty per cent, maybe we can clean it up twenty-five per cent. And anything we do to advance the security of our state, it seems to me, is worthy of the effort. (Ibid., pp. 34-5)

And later:

> We don't have the powers to deal adequately with aliens, but we do have this Alien Land Law, which we are willing to use. We say to the government that it won't accomplish the full purpose, but we will go as far as we can with it, and then we ask the help of the government to go farther. (Ibid., p. 162)

District ATtorney Dockweiler of Los Angeles County made a speech urging that the Alien Land Law be forgotten and that they "go about the thing in a direct fashion and use every direct power that is within our hands to take these people out of these areas". (Ibid., p.70) Warren answered:

> Now John, that is a darned good speech, and the sentiment of it is fine. But we are practical law enforcement officers here, and we have got to deal with practicalities. In the first place, we have got to realize that we don't have any power in this state government to move any alien off of anything, unless we get it under this Alien Land Law.
> .....

And in response to a question, he continued later:

> I have talked to General DeWitt, I have talked to subordinate officers, I have talked to the Army, I have talked to the Intelligence Unit of the Navy, I have talked to the FBI, I have talked to every federal agency that there is in this part of the country, trying to get some relief from this situation. But evidently they haven't been able to act under the circumstances, whatever they may be.
> Now we can't go to the government and ask them to deputize us, because there isn't any procedure for it as far as I know, and there isn't any policy of the government indicating they want to do anything of that kind....
> Now, it is fine to say 'Let's go and ask the government to do it' and 'Let's demand the government do it for us', but if they don't do it we are just right where we were, just a garden variety of law enforcement officers with certain responsibilities to the people of our state, depending upon what are in these books

> right here; nothing that is outside of it.
> Now, in this book is the Alien Land Law....
> .....
> Now John, I agree with you on your speech. I agree with you in wanting to do something of that kind (take the Japanese out of the area). And I will go as far as I can, but I don't agree that we ought to forget about the Alien Land Law or any other act that is demanding a felong. (Ibid., pp. 71 ff.

The District Attorney of Yolo County declared that enforcement of the Alien Land Law was not enough, that the sentiment in his county was for internment. Warren answered:

> But Chester, regardless of our views on that subject you and I have no power of internment. If we did, perhaps we could come to an agreement pretty quickly in this room as to what should be done. But we have no such powers over aliens. It is only because this is our land, this is our state, that we have the right to determine who shall be entitled to own land in this state. (Ibid., p. 35)

In response to a question from the Sheriff of Orange County, Warren express his opinion of the working relations between the federal and state law enforcement officers:

> I think it is absurd to ask us to try to enforce the law, try to take care of a part of the internal security of this country, to try to protect against sabotage and fifth column activities, when the facts as to who our potential fifth columnists and saboteurs are, are concealed from us. I can't see it in any other light. I do believe that in time the government will revise its thinking on that subject and will give us that information, and I would happily join with you in any representation that you want to make to the government in order to obtain that information. (Ibid., p. 48)

Regarding the probable shortage of agricultural production if the Japanese were removed, Warren said:

> The Farm Bureaus of the State represent that if these Japanese leases are not in operation there will be white labor and white tenants to farm the land. They advise me that not ten per cent of the work that is done on these Japanese farms is done by the Japanese themselves; it is done by these migratory groups of Filipinos, Mexicans, and even white people who go from one end of the state to the other, depending upon the crops. They say to me that whether a white person has the lease, or whether a Jap person has the lease, in all probability they will have exactly the same help. But at the present time, if we have too many of these Japanese in possession of

these tomato lands and other lands, such as you have described, when it comes time to harvest the crop, the Filipinos wouldn't work for them.

.....

(And later) You know, Mr. Harrison, I think the argument that we can't disturb the agricultural situation, that we can't disturb the Japs because we will disturb the agricultural situation, is a fallacy. I think it defeats itself, because I think if we are going to have to be dependent for our agricultural products upon alien enemies, we are putting ourselves into a pretty bad fix, it seems to me. I think if we can clean this situation out, or as much as we can, and get it into white ownership or white possession, we are making ourselves more self-reliant than we might otherwise be. (Ibid., pp. ~~xx~~ 58, 60)

Toward the close of the afternoon session, Att. Gen. Warren reiterated his opinion as to the function of the law enforcement officers acting under the Alien Land Law.

I believe, as I said at the outset, that we ought to consider that we are not out to do any witch hunting, we are not out just to put people in jail. We are not out to punish individuals for what the Japanese Government or other individuals did at Pearl Harbor; we are interested, however, in the security of our state and we do have the right to believe, and we should believe, that if unrestrained, some of these people are likely to produce in this State a situation comparable to what happened at Pearl Harbor.

Under those circumstances, people of Japanese extraction living in California, are potentialities for danger in this State, and we should do what we can with our Alien Land Law to try to minimize that danger, realizing that all we can do is to minimize it. We never can effectively eradicate it because it takes a greater weapon and more weapons than we have available to us under this Act....

.....

It would be my desire, in so far as we can, to obtain the cooperation of these people and to accomplish what we can by easy methods rather than do it the hard way. If these people are willing, on a showing that it gives a dangerous appearance for them to remain where they are, if they are willing to get out after being shown that, then I think we ought to be willing to do it without taking formal steps.

.... I would scrutinize very carefully and with the greatest suspicion any recent acquisition or any recent leases of lands in the neighborhood of any Military or Naval establishments, or any public utility, particularly at a vital point of a public utility. (Ibid., pp. 122-3)

Warren promised to help the county officers both on the investigative and legal side. He promised to furnish them with briefs on the subject as well as forms of indictment for violation of the Act. He also promised that his office would put investigators in the field who would consult with the local officials. (Ibid., pp. 124-5) Each county was to make a survey of Japanese ownerships which violated the Alien Land Law. (Ibid., p. 136)

Before the meeting adjourned for lunch, Mr. Warren appointed a committee of seven to draft a resolution stating the concensus of the opinion of the meeting. The committee appointed contained the members who had been most active during the morning discussion, E.g., Heald of Imperial County and Dockweiler of Los Angeles County. (Ibid., p. 90) This committee presented its resolutions during the afternoon session. The first resolution stated in part that the Pacific Coast States were a combat zone; that because of its situation, the heavy concentration of military and industrial establishments, and the heavy concentration of Japanese population, California was in a most critical situation; that the California District Attorneys and Sheriffs were of the opinion that fifth column activities were planned, that there had been insufficient restraint of aliens, that the "evils sought to be cured cannot be fully, completely, and wholly met and eliminated by the enforcement of said Alien Land Law without Federal assistance". It conclued: "we go on record as urging the Attorney General of the United States and the Department of Justice that all alien Japanese be forthwith evacuated from all areas in the State of California to some place in the interior, to be by them designated, for the duration of the war". (Ibid., pp. 156-8) This resolution was adopted by the group. A second resolution urging the amdnement of the Alien Land Law was not adopted because the group felt that its passage at that time would weaken their plan of prosecuting under the Alien Land Law. Instead it was moved that

suggestions for changes be made to the Legislature. This, they felt, would obviate the publicity a resolution would receive. (Ibid., pp. 166-170)

The following day, Mr. Warren addressed letters to the District Attorneys of the State explaining in detail the information desired on the land ownership maps.

> Accurate knowledge of ~~xxxx~~ the location of such lands (Japanese held) with respect to military establishments, airports, war industries and vital utilities is of course of particular importance. The information required includes the location of all lands owned, occupied or in the control of persons of the Japanese race, including those who are American citizens as well as those who are aliens.
> .....
> All property which is owned, controlled or occupied by persons of the Japanese race, whether citizens or not, should be marked on the maps in red. The scale of the General Highway Map is too small to permit the location of city lots. It is therefore requested that you obtain a separate city map for each city and indicate thereon, in red, such lots or other lands as may be in the hands of members of the Japanese race, also locating on the city maps such establishments as the city hall, gas plant, hospital, water reservoir, power transmission lines, sewer plant, telephone exchange and war industries....
> .....
> While the preparation of this map will of course be useful in connection with the survey now being made of Alien Land Law violations, it is of course not a substitute for such a survey as the map will include all lands in the hands of persons of the Japanese race, even those in the hands of American citizens of Japanese descent. (Warren to Dockweiler, Letter, 2/3/42)

Early in February, the State Personnel Board issued an order which would bar citizens of enemy alien parentage from holding state civil service jobs. The Board directed its staff in administering the civil service system of the state:

1) to refuse to take action necessary to permit such citizens to take civil service examinations,
2) to refuse to certify such citizens for State employment where their names are eligible civil service lists after qualifying therefor by an examination,
3) to withdraw the names of such citizens from any certifications for employment that have already been made, and
4) to investigate all such citizens who are now employed by the State. (ACLU News, 3/42)

Attorney General Warren was requested to deliver an opinion on this ruling. His opinion in part follows:

> It (the ruling) attempts to establish different degrees of loyalty and in so doing discriminates against naturalized citizens and citizens by birth of the first generation, in favor of those citizens whose forbears have lived in this country for a greater number of generations. Such distinctions are neither recognized nor sanctioned by any provision of the constitution or by any law, and unquestionably constitute a violation of the civil liberties guaranteed to all citizens by the fundamental law of our land.
>
> In addition to the fundamental questions of rights of citizenship and civil liberties involved, this order is in direct opposition to the letter and spirit of our Civil Service statutes which contemplate an opportunity for public service by all citizens on equal terms....
>
> A substantial portion of the population of California consists of naturalized citizens and citizens born of parents who migrated to this country from foreign lands. They have in the past and do now represent the highest standards of American citizenship.... To question that loyalty or place them in a category different from other citizens is not only cruel in its effect upon them but is also disruptive of the national unity which is so essential in these times.
>
> It is my conclusion that said order, discriminating as it does against naturalized citizens and against American born citizens of the first generation, violates the civil liberties of citizens as guaranteed by the Constitution of the United States and of this State and is in conflict with our Civil Service Act. (Ibid.)

Against Warren's advice, the State Personnel Board announced it would mail questionnaires to all State employees whose names sounded Japanese. (S.F. Chronicle, 2/18/42)

A somewhat similar situation arose in regard to the granting and renewal of professional licenses. Gov. Olson had suggested the revocation of professional licenses held by enemy aliens. Att. Gen. Warren pointed out that citizens of enemy countries are themselves enemies under the Trading with the Enemy Act only when they are so declared by a presidential proclamation. So far, there had been no such proclamation. He therefore advised State licensing boards to continue to grant licenses, but only after they had received proof of the good character of each applicant. (S.F. Chronicle, 2/20/42)