

MI.40

67/14
c

COPY

WAR RELOCATION AUTHORITY
CENTRAL REGION

Heart Mountain Relocation Project
Heart Mountain, Wyoming

OPINION NO. HM-1

November 20, 1942

To: The Project Director
Attention: Mr. Joe Carroll
Subject: Applicability of leave regulations to Caucasian spouses of evacuees of Japanese ancestry residing within the Heart Mountain Relocation Area

Mr. Carroll inquires whether the Caucasian spouse of an evacuee of Japanese ancestry residing within the Heart Mountain Relocation Area must apply for leave under the regulations of the War Relocation Authority before departing from the Area for indefinite residence outside the project.

1. Public Proclamation WD 1 of the Secretary of War issued August 13, 1942 establishes the relocation projects in the central and southern regions of the War Relocation Authority as military areas and designates them as "War Relocation Project Areas." The Proclamation further provides that,

"All persons of Japanese ancestry and all members of their families, both alien and non-alien, who now or shall hereafter be or reside, pursuant to orders and instructions of the Secretary of War, or pursuant to the orders of instructions of the Commanding General, Western Defense Command and Fourth Army, or otherwise, within the bounds of any of said War Relocation Project Areas are required to remain within the bounds of said War Relocation Project Areas at all times unless specifically authorized to leave as set forth in paragraph (c) hereof." (Underlining supplied.)

Paragraph (c) provides:

"Any person of Japanese ancestry and any member of his family, whether alien or non-alien, who shall now or hereafter be or reside within any of said

War Relocation Project Areas, before leaving any of said Areas, shall obtain a written authorization executed by or pursuant to the express authority of the Secretary of War or the Director, War Relocation Authority, setting forth the effective period of said authorization and the terms and conditions upon and purposes for which it has been granted." (Underlining supplied.)

It is clear that under the terms of the Proclamation of the Secretary of War the Caucasian spouses of an evacuee of Japanese ancestry residing within the Heart Mountain Relocation Area must have a written authorization executed by or pursuant to the authority of the Secretary of War or the Director of the War Relocation Authority before departing from the Area.

2. On August 28, 1942 the Director of the War Relocation Authority authorized project directors and assistant project directors in the Central and Southern Regions "to grant written authorizations to persons to leave and to enter the particular area or areas over which they have, respectively, been authorized to exercise jurisdiction, in accordance with paragraphs 3 and 4 of Public Proclamation No. WD 1 of the Secretary of War dated August 13, 1942." The delegation further provides that each such written authorization shall be in such form as may be required by applicable regulations or instructions of the War Relocation Authority.

In his delegation of authority pursuant to Proclamation No. WD 1 the Director of the War Relocation Authority did not make any distinction between the Caucasian spouses of an evacuee of Japanese ancestry and other evacuees.

3. The regulations of the War Relocation Authority governing the issuance of leaves for departure from relocation areas, effective October 1, 1942, provide that,

"Application for leave. Any person residing within a relocation center who has been evacuated from a military area or who has been specifically accepted by the War Relocation Authority for residence within a center may apply for leave." (Underlining supplied.)

No special provision is made in the leave regulations for issuance of leaves to Caucasian spouses of evacuees of Japanese ancestry residing within a relocation area.

In my opinion the Caucasian spouse of an evacuee of

Japanese ancestry residing within the Heart Mountain Relocation Area is required to apply for and be granted leave in accordance with the leave regulations of the War Relocation Authority before departing from the Area.

Jerry W. Housel
Project Attorney

WAR RELOCATION AUTHORITY
CENTRAL REGION

Heart Mountain Relocation Project
Heart Mountain, Wyoming

OPINION NO. HM-2

January 19, 1943

TO: The Project Director

ATTENTION: Mr. Everett Lane
Mr. Marlin T. Kurtz
Mr. Lundgren T. Main

SUBJECT: Gift of Kitchen Grease, Egg Crates, and Bread
Packing Boxes to Boy Scouts or other Evacuee
Organization.

Sometime ago Mr. Kurtz inquired whether evacuee organizations at the center such as the Boy Scouts, Girl Scouts, or similar groups, might collect kitchen grease from the mess halls, sell it, and retain the proceeds for organizational purposes. Mr. Main and Mr. Lane raised the related problem of whether egg crates and bread packing boxes also can be collected and sold by these groups and proceeds retained for their group activities.

None of the above items are now being collected and sold by the War Relocation Authority. Mr. Main indicates that the Government procedures for collecting and selling such items as egg crates and bread packing boxes require so much time as to make their disposition impracticable. I am advised that the Government is not receiving any return from the kitchen grease, egg crates, or bread packing boxes at present and that all of these items are burned or disposed of as rubbish.

In November I took up with the Solicitor the question of whether kitchen grease might be collected and sold by evacuee organizations and the proceeds of the sales retained for the benefit and use of the organizations. On December 4 the solicitor replied as follows:

"Kitchen grease may be given to evacuee organization under Executive Order No. 9102. Proceeds of sale will then belong to evacuees."

Executive Order No. 9102 of March 18, 1942, authorizes the Director of the War Relocation Authority to provide for the

the needs of evacuees "in such manner as may be appropriate." The Director is further authorized to make such expenditures including the making of loans and grants and the purchase of real property as may be necessary within the limits of such funds as may be available to the Authority. The First Supplemental National Defense Appropriation Act, 1943, approved July 25, 1942, provides funds for the War Relocation Authority to carry out its functions under Executive Order No. 9102.

In my opinion there is no difference between kitchen grease and egg crates or bread packing boxes, in so far as the present question is concerned. The Government is not now receiving any return from any of these items and War Relocation Authority is authorized to give these articles to evacuee organizations for such use as they may be able to make of them. If the items are sold, the evacuee organizations may retain the proceeds for any organizational purposes that do not contravene the regulations of the War Relocation Authority.

Jerry W. Housel
Project Attorney

COPY

WAR RELOCATION AUTHORITY
CENTRAL REGION

Heart Mountain Relocation Project
Heart Mountain, Wyoming

CB
K.S.

OPINION NO. HM-3

February 2, 1943

To: The Project Director
Attention: Mr. Lundgren T. Main
Subject: Purchase of microscope for Center
hospital laboratory

Mr. Main has inquired whether a microscope costing about \$270.00 can be purchased for the hospital in accordance with General Limitation Order L-144 of the War Production Board, dated December 5, 1942. It appears that the hospital laboratory now has a small microscope which is inadequate for its needs but is part of the essential laboratory equipment; that if the new larger microscope in question is purchased the small microscope will still be used; that work done with the large microscope is different from that performed with the smaller one.

Limitation Order L-144 provides that no person shall sell laboratory equipment containing specified metals and other articles except pursuant to a purchase order or contract containing a certification that the equipment will be used or sold in accordance with the provisions of the Order (unless ordered by the Army, Navy or other specified agencies or designated foreign governments). No person shall make such certification unless the equipment is for use or resale for specified purposes. The only purpose listed for which the microscope might be obtained by the hospital in this case is the following:

"To the extent necessary for the replacement of essential existing equipment in laboratories affecting the public health, and in United States government, state, county, and municipal laboratories".

In this case the large microscope desired by the

hospital laboratory is not for the replacement of any existing essential equipment in the laboratory. Even if the microscope were to be purchased for replacement of such equipment, Limitation Order would restrict the purchase cost "to the extent necessary" for its replacement.

In my opinion the large microscope desired by the hospital under the circumstances above outlined cannot be acquired in accordance with the provisions of Limitation Order L-144, unless it is purchased through the Army.

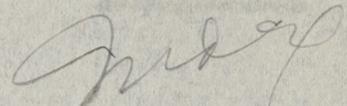
Jerry W. Housel
Project Attorney

JWH/mt

MAR 2 1943

CENTRAL REGION

Heart Mountain Relocation Project
Heart Mountain, Wyoming



OPINION NO. HM-4

February 22, 1943

To: The Project Director

Attention: Lieutenant Ray McDaniels, Joe Carroll,
Lyle Holme, and W. B. Macfarlane

Subject: Requirement of registration by evacuee aliens
and citizens

Lieutenant McDaniels has inquired whether evacuee citizens who refuse to swear allegiance to the United States, express their desire to expatriate, and refuse to execute Selective Service Form DSS Form 304A and Form WRA-126a may be subject to criminal penalty under the laws of the United States. Mr. Carroll, Mr. Holme, and Mr. Macfarlane also have inquired whether evacuee citizens can voluntarily expatriate themselves with a view to avoiding immediate liability for service in the armed forces of the United States.

1. The purpose of evacuee registration on Forms DSS-304A and WRA-126a is to obtain supplemental information for determining the eligibility of registrants for military service, either by voluntary enlistment or induction through the Selective Service System, and for employment in war plants and industries. All male evacuees 17 years of age or over are to execute these forms. Form DSS-304A was prepared by the Selective Service System with the cooperation of the War Department. Form WRA-126a was prepared by the War Relocation Authority and was designed to supplement Form DSS 304-A in the case of registrants who will not be called or immediately eligible for military service, but who may wish to find war work outside the center.

The procedure for registration of evacuees is set forth in Administrative Instruction No. 22 (Revised), Supplement 3, of the War Relocation Authority. It appears to be in accordance

with rules and regulations pursuant to the Selective Training and Service Act of 1940, as amended. 50 U.S.C. App. 301, 50 U.S.C. App. Supp. I, 302. In letter of February 1, 1943, the President of the United States approved the registration and induction program for evacuees and pointed out that the proposed combat team of evacuee citizens is logical step toward reinstatement of normal Selective Service procedure temporarily disrupted by the evacuation.

2. Under the Selective Training and Service Act of 1940, as amended, it is

"... the duty of every male citizen of the United States, and of every male alien residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and sixty-five, to present himself for and submit to registration at such time or times or place or places, and in such manner and in such age group or groups, as shall be determined by rules and regulations prescribed hereunder". 50 U.S.C. App. Supp. I, 302 (Underlining supplied).

The Selective Training and Service Act of 1940 further provides that

"Any person charged as herein provided with the duty of carrying out any of the provisions of this act, or the rules or regulations made or directions given thereunder who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical, or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces, or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in

the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment....Precedence shall be given by courts in the trial of cases arising under this Act." 50 U.S.C. App. 311 (Underlining supplied).

3. I believe that the penal provisions above are applicable to evacuees required to register in accordance with the procedure outlined in Administrative Instruction No. 22 (Revised), Supplement 3, and that any evacuee required to register who refuses or fails to do so may be subject to the penalties indicated.

4. Present plans contemplate the induction into the Army of evacuee citizens only and evacuee aliens are not to be inducted into the armed forces at this time. However, the requirement for evacuee aliens to register is not in any way affected by the fact that they are not now to be inducted into the armed forces. Evacuee aliens as well as citizens are subject to the penalties described above for refusal or failure to register, even though they may not be inducted and immediately liable for service.

5. The question has arisen as to whether evacuee citizens can by voluntary act lose United States citizenship, become alien enemies, and thereby avoid liability for immediate induction and service in the armed forces of the United States. Since both aliens and citizens are required to register, citizens could not in this or any other way legally avoid the registration requirement. They could avoid immediate liability for induction in the armed forces only if (1) they can lose American citizenship and (2) are or can become alien enemies.

The right of expatriation of all people is recognized in the Nationality Act of 1940. 8 U.S.C. 800. However, the Act specifically provides that

"The loss of nationality under this chapter shall result solely from the performance by a national of the acts or fulfillment of the conditions specified in this chapter". 8 U.S.C. 808.

Under the Act no citizen can expatriate himself or be expatriated while within the United States or any of its possession except by deserting the military or naval service

of the United States in time of war, if convicted thereof by a court martial, or by treason against the United States, if convicted thereof by a court martial or a court of competent jurisdiction. Expatriation will result from the performance within the United States or its possession of any act or condition necessary therefore, except treason or desertion, only if and when the citizen thereafter takes no residence abroad. Furthermore, no citizen under 18 years of age can expatriate himself except by obtaining naturalization in a foreign state or by treason against the United States, if convicted thereof by a court martial or court of competent jurisdiction. See Op. Sol. No. 41.

Since evacuee citizens can not fulfill the first condition of avoiding immediate induction, into the armed forces, i.e., the loss of United States citizenship, it is unnecessary to consider whether they are or can become enemy aliens. Hence, evacuee citizens not only are required to register but also are liable for immediate induction into the armed forces of the United States.

Summary

Any evacuee citizen or alien required to register on the Selective Service Form pursuant to the Selective Training and Service Act of 1940, as amended will be subject to severe penalties (fine and imprisonment) for refusal or failure to so register or for counseling or aiding others to evade such registration. The fact that evacuee aliens are not now being inducted into the armed forces does not in any way affect their requirement to register under the Act, and both evacuee aliens and citizens must register. There is no way in which evacuee citizens can expatriate themselves while in the United States or its possessions with a view to avoiding immediate liability for service in the armed forces.

Jerry W. Housel
Project Attorney

February 24, 1943

SYLLABUS

Selective Service; registrations; expatriation; liability of evacuee citizens and aliens for registration and service in armed forces.

1. The registration of evacuee aliens and citizens under Administrative Instruction No. 22 (Revised) Supp. No. 3, of the War Relocation Authority appears to be in accordance with rules and regulation pursuant to the Selective Training and Service Act of 1940, as amended.

2. Under the Selective Training and Service Act it is the duty of every male citizen and alien residing in the United States between the ages of 18 and 65 on the date fixed for registration to register at such time or place and in such manner as determined by rules and regulations under the Act.

3. Any person failing to register, making any false statement in connection with registration, or otherwise evading registration or service in the land or naval services, or counseling or aiding others to evade such registration or service is upon conviction subject to imprisonment for not more than five years or fine of not more than \$10,000, or both.

4. The penal provisions of the Selective Training and Service Act of 1940 appear to be applicable to evacuees required to register in accordance with the procedure outlined in Administrative Instruction No. 22 (Revised) Supp. No. 3 of the War Relocation Authority.

5. Evacuee aliens are required to register even though they may not be inducted and immediately liable for service in the armed forces of the United States.

6. Under the Nationality Act of 1940 no citizen can expatriate himself while within the United States or any of its possessions except by deserting the military or naval service in time of war, or by treason against the United States; no citizen under 18 years of age can expatriate himself except by obtaining naturalization in a foreign state or by treason against the United States.

7. Evacuee citizens are required to register and also are liable for immediate induction into the armed forces of the United States.

Jerry W. Housel
Project Attorney

Statutes cited:

Selective Training and Service Act of 1940
as amended, 50 U.S.C. App. 301, 311;
50 U.S.C. App. Supp. I, 302.
Nationality Act of 1940, 8 U.S.C. 800

WAR RELOCATION AUTHORITY

Heart Mountain Relocation Project
Heart Mountain, Wyoming

OPINION NO. HM-5

March 26, 1943

To: The Project Director
Attention: Mr. Embree
Subject: Breaking and entering apartments and removing personal property therefrom to extinguish fire or prevent destruction of the property from fire

Mr. Embree inquires whether firemen, policemen or others may break and enter apartments of residents and remove personal property therefrom in order to extinguish a fire or prevent destruction of the property from fire.

1. Fire wardens are required under Wyoming law to attend all fires and give their personal superintendence to extinguishing fires. Wyo. Rev. Stats., 1931, Chapter 22, Section 1443. In addition it is their duty to examine all houses and buildings in the community where they are acting as fire wardens or policemen to ascertain the condition of chimneys, ranges, fixtures, etc., likely to endanger the property or inhabitation thereof to loss from fire. Id., Chapter 30, Section 821.

2. Breaking and entering the apartments would be punishable under Wyoming law only where such action is unlawful or for the purpose of committing a felony. Id., Chapter 52, Section 304-305 and 306. A policeman, fireman or resident who breaks and enters a house and removes personal property therefrom where such action is reasonably necessary to extinguish a fire or to prevent destruction of the property by fire would not be acting unlawfully or for the purpose of committing a felony. Under some laws it is a misdemeanor for a person to refuse to aid in extinguishing a fire. 26 C. J. pp. 581-582. A policeman, fireman or other resident therefore would not be criminally liable for breaking or entering an apartment and removing property therefrom when reasonably necessary to extinguish the fire or prevent loss of the property from fire.

3. Fire wardens, policemen or residents would not be subject to civil action for damage resulting from their breaking and entering an apartment and removing therefrom personal property of the inhabitants, where such acts are reasonably necessary to fight a fire or prevent destruction of such property and where reasonable care is exercised. However, if a fire warden, policeman or resident is negligent in such acts and in consequence of his negligence a person suffers damage, the person may be able to recover in a civil action against him for such damage. See 43 C. J. pp. 825-831.

In summary it is my opinion that fire wardens, policemen or residents may break and enter apartments and remove therefrom personal property of the inhabitants where such action is reasonably necessary to fight the fire or conserve such property from fire. They would not be criminally liable for these acts if the acts are reasonably necessary, and they would be civilly liable for damages only to the extent that such damages are caused by negligence in the performance of their duties.

Jerry W. Housel
Project Attorney

JWH/ea

WAR RELOCATION AUTHORITY

Heart Mountain Relocation Project
Heart Mountain, Wyoming

OPINION NO. HM-6

June 1, 1943

To: The Project Director

Attention: Mr. Scott Taggart

Subject: Authority of Heart Mountain Community Enterprises to borrow money from local banks

Mr. Taggart advises that officers of the local banks desire information as to the right of Heart Mountain Community Enterprises to borrow funds for business purposes.

1. The Heart Mountain Community Enterprises was organized as a trust by declaration of trust executed on January 29, 1943 by seven evacuee residents as trustees, copy of which is filed in the office of the County Clerk for Park County. The enterprises were established pursuant to Administrative Instruction No. 26 of the War Relocation Authority which provides for the creation of such an enterprise at each relocation center for the purpose of supplying goods and services to the evacuees at as low cost as possible. The Heart Mountain Community Enterprises, like the community enterprises at other centers, is a private business organization owned and managed by the resident evacuee trustees. The trustees by the declaration of trust are legally vested with title in and to the business of the Heart Mountain Community Enterprises and in and to the current stock in trade thereof, and subject to WRA regulations, hold, use and manage the same to provide goods and services for the residents.

2. The above Instruction under which the enterprises is organized provides that the documents whereby the enterprises will acquire facilities from the War Relocation Authority "shall include, as requirements of conduct, the policies outlined in this Instruction." Such policies include the following:

- a. Maintaining adequate records of all operations and meetings.
- b. Bonding all responsible managers and other persons handling cooperative funds.
- c. Carrying adequate insurance to protect the enterprises from undue loss from any probable cause.
- d. Having all records audited quarterly for the first year of operation and at least semi-annually thereafter.

e. Examination by the War Relocation Authority of the accounts and records of the enterprises at least annually and at such other times as the project director may deem necessary.

f. Formal organization as a private enterprise, either a duly organized trust or an incorporated cooperative.

g. Maintenance of a cash position to provide a current ratio of current assets equal to twice the amount of current liabilities.

h. Prohibiting payment of patronage refunds exceeding 25 per cent of the net operating profit until a ratio of current assets to current liabilities of three to one is established.

3. The Heart Mountain Community Enterprises operates at the Heart Mountain Relocation Center by license granted to it by the War Relocation Authority in Operating Agreement between WRA and the enterprise dated March 30, 1943. A further express condition of the license is that "the community enterprise will conduct its activities in accordance with the general policies prescribed by the authority for community or consumer enterprises," such policies being embodied principally in the above Administrative Instruction as amended or supplemented. Another express condition to the license is that the community enterprise must make its books and other records available to WRA at any time and must submit its plan for an accounting system to WRA for review and revision in accordance with WRA requirements. The enterprises is also required to provide adequate bonds for its personnel and carry necessary insurance.

4. The War Relocation Authority maintains at each project a consumer or community enterprises division headed by a Superintendent of Community Enterprises whose duties are to advise and offer guidance to the enterprises at the project. It is the responsibility and duty of the Superintendent of Community Enterprises to see that the enterprises operates in accordance with the provisions of War Relocation Authority regulations and the terms of the Operating Agreement between WRA and the enterprises.

5. In letter of April 17, 1945 the Solicitor of the War Relocation Authority in Washington advises me as follows:

"In your item 11 you ask about the permissibility of the Community Enterprises obtaining short term loans from the local banks. There is no objection whatever to their doing this; in fact, we would rather have them make such private loans than have them borrow from W.R.A. They are as free to make such private loans, if they can, as is any other private corporation or business association."

6. There is no prohibition in War Relocation Authority instructions or in the Operating Agreement between WRA and the Heart Mountain Community Enterprises nor in the declaration of trust for the enterprises against the borrowing of funds from private sources by the enterprises.

Conclusion

In view the foregoing is clear that the Heart Mountain Community Enterprises is a private business organization subject to War Relocation Authority regulations and is authorized to borrow funds from any private source from which such sums may be available.

Jerry W. Housel
Project Attorney

30.100

Barnett

Project Attorney

461 Market Street

August 31, 1944.

OPINION P-2 (1944)

Mr. Byron Ver Ploeg,
Project Attorney,
Heart Mountain Relocation Center,
Heart Mountain, Wyoming.

SEEN
ASB

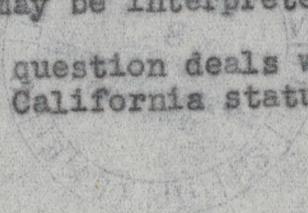
Dear Byron:

Your letter of August 2, 1944, raises the question as to whether a conveyance from an alien to a citizen three years ago corrected the situation to the extent that escheat would not now lie. You also ask whether Section 354 of the California Code of Civil Procedure would not be unconstitutional on the ground that it constitutes an attempt to enter the field of foreign relations.

The answer to your first question depends largely upon what construction the courts give to Section 7 of the Alien Land Law of 1920, as amended June 20, 1923.

In Washington and Oregon it seems quite clear that a bona fide conveyance from an alien to a citizen prior to the actual initiation of escheat proceedings would serve to bar such proceedings. In California, however, since June 20, 1923, the law has provided that escheat shall take place as of the date of wrongful acquisition by the alien and that title shall pass to the state on final judgment as of the date of such acquisition. (See Op. Sol. No. 80) The effect of this so-called "automatic escheat" has not as yet been passed upon by the courts; but there are precedents which by analogy would justify a literal interpretation of the provision, and under present circumstances we may very well expect the courts to lean toward such an interpretation. As a practical matter, an alien wrongfully holding title is undoubtedly in a better position after conveying to a citizen, regardless of how Section 7 may be interpreted.

Your second question deals with the constitutionality of the following California statute:



61540

401 ... Street

August 22, 1950

MEMORANDUM FOR THE DIRECTOR

Mr. Byron Van ...

Subject: ...

Re: ...

Dear Sir:

Your letter of August 2, 1950, regarding the question as to whether a conveyance from an alien to a citizen in the year 1950 is subject to the provisions of the Alien Land Law of 1942, is received. The question is whether Section 551 of the California Code of Civil Procedure, which provides that no alien shall acquire an interest in real property in this State, is applicable to the acquisition of an interest in real property by an alien in the year 1950.

The answer to your question is that the Alien Land Law of 1942, as amended June 2, 1950, is applicable to the acquisition of an interest in real property by an alien in the year 1950.

In Washington the question is more difficult than here because of the fact that the Alien Land Law of 1942, as amended June 2, 1950, is applicable to the acquisition of an interest in real property by an alien in the year 1950. The question is whether Section 551 of the California Code of Civil Procedure, which provides that no alien shall acquire an interest in real property in this State, is applicable to the acquisition of an interest in real property by an alien in the year 1950.



The question is whether Section 551 of the California Code of Civil Procedure, which provides that no alien shall acquire an interest in real property in this State, is applicable to the acquisition of an interest in real property by an alien in the year 1950.

Mr. Byron Ver Ploeg,
Heart Mountain, Wyoming.

August 31, 1944.

Sec. 354, Code of Civil Procedure:

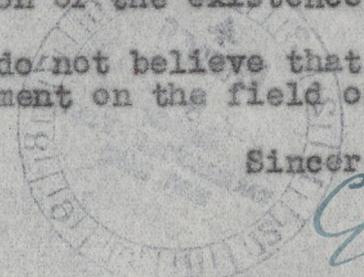
In Suits by Aliens, Time of War to be Deducted. When a person is, by reason of the existence of a state of war, under a disability to commence an action, the time of the continuance of such disability is not part of the period limited for the commencement of the action whether such cause of action shall have accrued prior to or during the period of such disability.

We doubt that this section would be held to be unconstitutional on the ground that it constitutes an attempt by the state to enter the field of foreign relations. I think that the effect of the code provisions mentioned in the Solicitor's Memorandum of January 17, 1944 is quite different from that of Section 354. As you will recall, the probate provisions mentioned in the Memorandum, attempted to condition the right of aliens abroad to take property in California by will or descent, upon the existence of a reciprocal right of citizens of the United States to take property in the foreign country. The purpose clause actually stated that the statute was aimed at fixing a policy of international relations. This seems clearly to constitute an encroachment on the field of foreign relations, and the court so held.

However, Section 354 is not based upon reciprocity with a foreign government, and it does not restrict the rights of the subjects of a foreign government. On the contrary, it grants a privilege without any strings attached. The provision, in effect, tolls the running of limitations on an alien's right to bring an action during the period in which the alien's native country is at war with the United States. As amended in 1943, this section applies only when the alien is under a disability to commence an action by reason of the existence of a state of war.

We do not believe that this could be construed as an encroachment on the field of foreign relations.

Sincerely,


EB
Edgar Bernhard,
Assistant Solicitor.

EB:KS:HS

61540

