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WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

October 29, 1942

MEMORANDUM FOR ATTORNEYS IN THE WASHINGTON OFFICE

I suggest that we make it a practice, when dictating letters to a Regional Attorney on any subject that is not entirely peculiar to the work of that Regional Attorney, to prepare copies of the letter that may be sent to the other Regional Attorneys for their information. In this way all the Regional Attorneys will have the advantage of questions raised by, and information given by or to, the other Regional Attorneys. In some cases this will make it necessary for copies to be made of an incoming communication so that the other Regional Attorneys may have the whole story.

Similarly, in preparing a letter or memorandum for the signature of the Director or otherwise, to a Regional Director or a Project Director, or some person outside WRA, I suggest that we consider, in each case, whether it would be helpful for the Regional Attorneys to be informed about the matter, and in such cases we should prepare extra copies to be sent to the Regional Attorneys.

Mr. Maurice Walk has been appointed consultant on litigation on a per diem basis. He will be located in Chicago, Illinois, and will come to Washington from time to time as convenient. I am arranging for copies of weekly reports, replies to weekly reports, opinions, Administrative Instructions, Solicitor's memoranda, and other papers, to be sent to Mr. Walk regularly, so that he may keep currently informed on all the work of the office. In addition, therefore, to the copies to be sent to the Regional Attorneys, an extra copy should be prepared to be sent to Mr. Walk.

Philip M. Glick

Solicitor

WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

October 30, 1942

MEMORANDUM FOR LAWYERS IN THE WASHINGTON OFFICE

I should like to make it a practice to cite, in opinions issued from this office, opinions issued by the Regional Attorneys and Project Attorneys whenever those opinions can appropriately be cited in support of some point we are making. Our citing these opinions will help bring them to the attention of the administrative officers in Washington, in the regions, and on the projects.

It is true that copies of Regional Attorney and Project Attorney opinions are not as conveniently available as copies of Solicitor's opinions. You can find ready reference to them, however, in the Index-Digests. Index-Digest No. 2 will be issued shortly.

Philip M. Glick

Solicitor

WAR RELOCATION AUTHORITY

Office of the Solicitor

Washington

January 30, 1943

MEMORANDUM FOR E. J. UTZ

My draft on the opinion relating to WRA authority to lease lands which it has acquired and which it temporarily does not need has been completed, but there was not sufficient time for it to be reviewed and released before tonight. However, Lewis who will issue the opinion as Acting Solicitor has read it, and we are in agreement on the conclusions.

I can therefore tell you that an opinion will be issued early next week in which the following conclusions will be reached:

I. The WRA has no express authority to convey lands or any interests therein. Although such authority under special circumstances may sometimes be implied, WRA has no implied authority to grant leasehold interests to private operators in lands which it has acquired for relocation centers and which it temporarily has no need for. Therefore, we cannot take care of our Granada situation by granting leases.

II. The authority of WRA to grant licenses for grazing and cropping purposes with respect to such lands to private operators is, however, clear. This has been done by Government agencies for many years and is approved in a substantial number of Attorney General opinions.

III. The disadvantage of a license, of course, is that it is revocable at the will of the lessor, which in this instance is the Government, and thus, the licensee has no assurance that he will be permitted to occupy the lands for the entire cropping or grazing season. If the War Relocation Authority should purport to give the licensee the right to use the land for a definite period, it really would be granting an interest in the land rather than a mere license. Possibly, this difficulty can be overcome by advising prospective licensees that the Authority would have been willing to give them

leases were it authorized to do so; and that, although the Authority will have the right to revoke their licenses at any time, it does not intend to do so any time before the cropping or grazing season is over. A further measure of security might be given licensees by requiring the consideration for the licenses or a substantial portion thereof to be paid only as the crops are harvested or as the pasture is used.

/s/ M. S.

Maurice Silverman

WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

February 18, 1943

To: Edwin G. Arnold

From: Philip M. Glick

While I was on my recent field trip attending the three regional meetings, several people made the same suggestion to me, namely, that it would be desirable for the Relocation Assistance Division in San Francisco to have several people on its staff, or from among those stationed in the field property supervisors' offices, visit the relocation centers frequently, for conferences with the evacuees on their property problems.

I was told that a great many details in connection with the property transactions can be better discussed in personal meetings than by correspondence. It was suggested, therefore, that the men actually visiting evacuee properties should plan to spend several days every now and then at particular centers. The fact that such a field property supervisor would visit a particular project could be advertised several days in advance of his arrival. The property officer and Project Attorney at the projects could then arrange a calendar of interviews for him at which he could discuss with the evacuees special questions that they or he may wish to raise.

It seems to me pretty clear that the idea is a good one and that it would be worth going to some considerable time, trouble, and expense to work out the details and put it in operation. Aside from improvement of general administration of the property work, such a system of periodic visits to the projects by the property supervisors may serve greatly to reduce the nember of requests for short term visits by evacuees to the West Coast to look after property problems.

I shall be glad to discuss this idea further with you at your convenience.

Philip M. Glick

Solicitor

cc: All Project Attorneys
Mr. Walk
Mr. Bernhard

PMGlick:hb

COPY

WAR RELOCATION AUTHORITY

WASHINGTON

February 20, 1943

To: Philip M. Glick

From: Edwin G. Arnold

This is in reply to your memorandum of February 18, with the excellent suggestion that field property supervisors should visit projects. This has already been considered and has been done to a very limited extent. The obvious limiting factor is the fact that the men are so busy managing property that they do not have much time to travel to the projects.

I am leaving for the Coast this week end and shall discuss the problem with Russell Robinson and the property supervisors.

/s/ E. G. A.

Special Assistant to the Director

Don Hoorn

B

WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

June 25, 1943

To: S. Cahn, Finance Section

Subject: Distribution of estate of evacuees without heirs or creditors

You have asked the advice of this office in reference to an inquiry contained in a letter from James G. Lindley, Project Director at Granada, dated June 14, 1943. The letter refers to a decedent evacuee who died leaving no known relatives or creditors. Apparently the evacuee was possessed of some personal property. Also, at the time of his death he was owed an amount earned by him as a WRA employee. The letter inquires as to the handling of both types of assets.

It seems that in the State of Colorado the law provides for a public administrator to assure proper administration of the assets as to which there is no person qualified to act as executor or administrator. See 4 Colo. Stats. Anno. (1935), c. 176, secs. 103-111. In Colorado when a decddent dies in the State intestate and without known heirs, it is the duty of the public administrator to take charge of the estate until administration thereon is granted to a person entitled thereto or to the public administrator himself. Idem sec. 107. The law of Colorado also provides for escheat to the State of property of a decedent who leaves no will, no heirs and no creditors. Money accruing from such estates is to be paid by the administrator to the State treasury and there held for 21 years, after which it is to be paid into the State school fund. The Attorney General is obligated to investigate and litigate the demands of any claimant after the funds are paid into the State treasury and up to the time when they are turned over to the State school fund.

The method of distribution referred to in 14 Comp. Gen. 676 (Opinion A-57389), whereby all the assets of a person dying without heirs or creditors were to be turned in to the Federal Treasury as a trust fund, seems to be applicable only when there is no provision for administration under the local law. If there is a public administrator or any other properly appointed administrator available to

handle the estate, it seems proper to turn the property over to such administrator rather than in to the Federal Treasury. Ultimate distribution is governed by State rather than Federal law. This is true not only in the case where there are heirs or creditors to take the estate, but also in cases where the estate must go by escheat to the State. The Federal Government cannot take property by escheat in a case like this.

As to the disposition of the amount owed the decedent for services rendered to the United States Government, there is a series of decisions of the Comptroller General which seem controlling. In 17 Comp. Gen. 49 (Opinion A-87483) it is stated:

> "The rule followed by the accounting officers of the United States has been uniform that where the claim against the United States is the sole asset, there must be a showing of heirs, creditors, etc., before the payment of the claim may be allowed and that such payment will not be allowed where the sole result would be an escheat to the State. However, where the claim against the United States is not the sole asset, payment may be made to the executor or administrator duly appointed and qualified notwithstanding that an escheat may result."

This ruling is also borne out by decisions in 11 Comp. Gen. 104 (Opinion A-38340) and 18 Comp. Gen 716 (Opinion A091611).

You will note from these decisions of the Comptroller General that, in a case in which the claim against the United States is the sole asset of the person dying without heirs or creditors, the check is to be deposited into the Federal Treasury to the credit of the trust fund referred to in 14 Comp. Gen. 676. This is designed to avoid escheat to the State under those circumstances. If, however, there are other assets, payment may be made to the duly appointed administrator even though an escheat to the State may result. For this purpose a public administrator would not be deemed a duly appointed administrator unless and until he was formally qualified to administer the particular estate.

Philip M. Glick
Solicitor

RALeflar:glc
cc- Don Harn, Granada

B

September 1, 1943

Memorandum to: Edwin G. Arnold

From: Philip M. Glick

Subject: California Senate Bill No. 140 Amending the California Alien Land Law.

You have asked me to examine and discuss the recent amendment to the California alien land law, and to compare the amendment with the provisions of the original act. The new enactment, commonly known as the "Engle Bill" (S.B.140) was passed by the California Senate on March 23, 1943, by the Assembly on April 17, 1943, and signed by Governor Earl Warren on June 8, 1943. It amends the California alien land law of 1920. The new enactment will be discussed section by section.

CALIFORNIA SENATE BILL NO. 140:

SECTION 1.

Repeals Sections 4 and 10 of the original act. (These sections are discussed and explained hereinafter)

SECTION 2.

Adds a new Section 4 to the original act. Uner the new section:

(1) Any alien mentioned in Section 2 of the original act, who is appointed as a guardian of any person, may not farm, operate or manage any land held by the guardianship estate, except solely for the benefit of the ward of the estate. Such guardian is also prohibited from receiving directly or indirectly any benefits from the use of such lands or the proceeds received from the sale of any crops produced thereon. The intent of this section is specifically expressed as being that no such alien shall by any guardianship proceedings whatsoever evade or seek to evade any of the provisions of the alien land law.

The aliens referred to in this section as being "any alien mentioned in Section 2" are all alien ineligible to citizenship under the laws of the United States, and corporations and associations controlled by them, who are permitted to own or lease lands within those states only for the purpose and to extendt provided for in existing treaties be-

tween the United States and the nations of which such aliens are citizens or subjects. There are no treaties between the United States and Japan which confer upon Japanese aliens the right to hold any interest in agricultural lands (37 Stat. 1504-1509; Porterfield v. Webb, 263 U.S. 225 (1923))

The corresponding provisions of the former Section 4 differed from that of the new Section 4 in that it declared that no alien mentioned in Section 2 of the original act could be appointed guardian of that portion of the estate of a minor which consisted of propety which such alien was inhibited from possessing, using, cultivating, occupying, transferring, or inheriting. It also provided that the public administrator of the proper county, or any other competent person or corporation, might be appointed guardian of a citizen whose parents were ineligible to appointment under the provisions of the section.

The provisions of the former Section 4 conformed to the section of the Probate Code of California which prohibits the appointment as a guardian of any estate which consists in whole or in part of real property of any persons ineligible to citizenship in the United States (Deering Probate Code of California, 1941 Sec 1411). The California Supreme Court in the case of Tetsubumi Yanox Estate 188 Cal. 645, 206 Pac. 995 (1922) held that the provisions of the alien land law were unconstitutional insofar as they denied the right of an alien father to be appointed guardian of the estate of his minor citizen child even though the child's estate consisted of agricultural land paid for by the father, and even though the guardianship was primarily for the purpose of evading the law. See also 19 Calif. L. Rev. 623.

The new Section 4 appears to recognize that the alien ineligible for citizenship may be appointed a guardian in certain circumstances under the California law, but endeavors to limit the right and powers of such guardians quite narrowly.

(2) There is required the filing of a very detailed annual report by the alien guardian with the court in which the guardianship estate is pending, and a copy of the report must be served by the guardian on the district attorney of the county.

(3) The court may from time to time require the guardian to make special reports on all things pertaining to the guardianship estate, and require the production in court of the ward for whose benefit the guardianship exists whenever the court may deem such procedure necessary and proper for the pro-

tection of the guardianship estate.

(4) The court may fix the compensation of the alien guardian, the amount of bond to be given by the guardian, and the amount of attorney's fee in all guardianship matters.

(5) The court may, when deemed to be for the best interests of said estate, remove any alien guardian whenever he fails, neglects, or refuses to comply with the terms and provisions of the act.

(6) A final account must be filed on behalf of any such guardianship estate at the time the ward or wards become 21 years of age. No such guardianship estate may be finally closed until this final report has been filed and approved by the court.

We have mentioned the provision of the former Section 4 that prohibited the appointment of an alien as a guardian of estates of minors when such estate involve property which he himself is prohibited from possessing, using, or inheriting. Section 4 also provided for the removal of such a guardian whenever it appeared to the satisfaction of the court that the guardian had failed to file his annual report, that the estate was not being administered with due regard to the primary interests of the ward, that facts existed which made the guardian ineligible to appointment in the first instance, or that there were facts establishing any other legal gound for removal. These provisions may all be taken to have been repealed, except insofar as they are repeated in the provisions of the new section 4 summarized above.

SECTION 3.

Amends Section 8 of the original act.

Section 8 of the original act provided for the escheat of any leasehold or other interests in real property, including cropping contracts which were declared to constitute an interest in real property, when such interests were held in violation of the act.

(1) The amendment adds to the former section a provision that the interest of the landlord or owner of real property, other than that of a landlord or owner who acted in good faith and after reasonable investigation, as well as the interest of the alien, shall escheat to the State as of the date of the creation and acquiring of interests in violation of the act. Proceedings to have

such escheat adjudged and enforced are to be instituted by the Attorney General or the district Attorney of the proper county. If the interest of the landlord or owner is an interest less than the fee, then the court determines the value of such interest and also the value of the interest of the alien, and enters judgment for the State for the amount thereof. The court then orders the sale of the interest of the landlord or owner and the interest of the alien.

The constitutionality of alien land laws and escheat provisions in such laws has been upheld by the United States Supreme Court on numerous occasions. See Porterfield v. Webb, 263 U.S. 225 (1923), involving the lease of land to an ineligible alien; Frick v. Webb, 263 U.S. 326 (1923), where the alien held shares in a corporation that owner interests in certain agricultural lands; and Webb v. O'Brien, 263 U.S. 313 (1923), involving a cropping contract with an ineligible alien.

A question may be raised as to the consitutionality of escheat of the interest of the landlord or owner as well as the interest of the alien. There are various analogous penal forfeiture provisions contained in other State and Federal statutes. One such analogous provision is contained in 26 U.S.C. 1181 which provides for the forfeiture to the Federal government of automobiles used in the violation of Federal liquor laws. Under this statute even the rights of an innocent lien holder may be forfeited without violating the 5th Amendment to the Constitution. Goldsmith-Grant Co. v. U.S. 254 U.S. 505 (1920). A similar provision in a state liquor statute was held not to vilate the 14th Amendment to the Constitution of the United States Van Oster v. Kansas 272 U.S. 465 (1926). A later Federal act, 27 U.S.C. 40, has given more protection to the innocent lien holder in liquor law case forfeitures. This later enactment was sustained in Richbourg Motor Co. v. U.S. 281 U.S. 528, (1929). These decision indicate that the forfeiture provisions involved in the California act might be held to be constitutional. We are not now taking time to do the necessary research to reach a more positive conclusion.

It should be noted in connection with escheat proceedings under the alian land law that the Supreme Court of the State of California has so interpreted the statute that prior to the actual institution of escheat proceedings the alien owner of land may legally transfer title to any one eligible to own the land and title of the person thus acquiring the property is not subjected to escheat. Where escheat proceedings are instituted before a transfer in made, then upon an entry of final judgment in the proceedings title passes to the State as of the date of acquisition of the property by the alien. Mott v. Cline, 200 Cal. 434, 253 Pac. 718

(1927); In re Tetsubumi Yano's Estate, supra.

(2) The amendment also makes the provisions of Section 8 inapplicable to any real property acquired by an ineligible alien in the enforcement of any lien, existing at the time of the passage of the bill, upon an interest inreal property. However, the alien is not permitted to hold possession of any agricultural land so acquired for a longer period than two years.

(3) Section 8 does not divest any interest which is acquired in good faith, for value, and not in violation of the act prior to the filing of a notice of lis pendens in connection with an action for escheat under the act.

SECTION 4.

Adds Section 10a to the original act.

This new provision replaces the repealed Section 10 of the original act. Section 10 provided a penalty for conspiracy to violate any provisions of the act, the penalty being imprisonment not exceeding two years or find not exceeding five thousand dollars, or both. Section 10a makes a violation of any of the provisions of the act punishable by imprisonment not exceeding 10 years or by a fine not to exceed five thousands dollars, or both.

SECTION 5.

Adds Section 10b to the original act.

This gives the Attorney General or the district attorney of the proper county the power to institute injunction proceedings in the name of the State torestrain violations of the act, all such proceedings to be instituted in the superior court of the county in which the real property involved is situated.

SECTION 6.

Adds Section 10c to the original act.

This section provides that proceedings may be instituted in the superior court for the purpose of determining by civil action for a declaratory judgment whether or not any agricultural land is being farmed or used under a contract written or oral in violation or the act.

SECTION 7.

Adds Section 11a to the original act.

This section provides that whenever leases, cropping agreements, or any other agreements to acquire, use, and transfer real property for farming or agricultural purposes or to transfer in whole or in part the beneficial use of such lands are made in the name of any other person, and such alien is allowed to enjoy directly or indirectly the beneficial use of such lands or the proceeds received from the sale of crops produced on such lands, any person entering into any such agreement with knowledge that any such alien will be permitted to receive any such benefits or any person who permits any such alien to receive any such benefit will be guilty of a violation of the terms and provisions of the act and punished as provided in Section 10a. The Attorney General or district attorney of the proper County is given power to institute injunction proceedings to restrain the carrying on of farming operations under the terms of any such prohibited agreements.

This section is probably aimed at the situation presented in the case of People v. Fugita et al. 215 Cal. 166, 8 Pac. (2)d 1011 (1932). This case involved an action under Section 9 of the alien land law to escheat certain realty conveyed by a third person to citizen children of an alien Japanese father who paid the consideration. Section 9 provides that if the consideration for the purchase of real property is paid by an ineligible alien and the title is taken in the name of a third person a prima facie presumption arises that the conveyance is made to avoid escheat as provided for in the act. The court used the following language: "From this it is argued that inasmuch as the alien moved onto the land with his children and cultivated and managed it, he had the beneficial interest in it condemned by the above language of the act. If it be conceded that the alien caused a valid gift to be made to his children, who are citizens, their estate was not depleted by the mere occupancy of the father if it was in subordination to their claims and title." The new Section 11a seems designed to assure escheat in circumstances such as were present in this case.

SECTION 8.

Adds Section 12a to the original act.

This new section provides for the admissibility in evidence of certified copies of public records which are relevant to the questions of the person's eligiblity to citizenship and his place of birth.

SUMMARY

The new section 4 of the alien land law seems to recognize that under California law an ineligible alien may be appointed as a guardian, and more rigidly regulates the activities of such alien guardians with respect to guardianship estates involving interests in land. The former Section 4 prohibited the appointment of ineligible alien as a guardian over an estate involving an interest in land, and provided for his removal if appointed. Section 8 of the original act provided for the escheat of any interest in real property acquired by an alien ineligible to hold such interest. Section 8 as amended by Senate Bill No. 140 provides for the escheat of the interest of the landlord or owner as well as the interest of the alien, and this provision may be constitutional. The amendemtn is made not to apply to real peropety acquired in the satisfaction of a lien existing at the time of the passage of the bill, but the alien may not hold property/acquire more than two years; and Section 8 does not divest any interest which is acquired in good faith prior to the filing of a notice of lis pendens in connection with an action for escheat under the act. Section 10 of the original act provided a penalty only for conspiracy to violate the provisions of the act. The new Section 10a provides a penalty for any violation of the provisions of the act. The penalty under Section 10 was imprisonment not exceeding two years or fine not exceeding five thousand dollars, or both. Under Section 10a the penalty is imprisonment not exceeding ten yearsor fine not exceeding five thousand dollars, or both. The new Section 10b gives the Attorney General or a district attorney the power to institute injunction proceedings to restrain violations of the act, and Section 10c provides for theinstitution of proceedings to determine by declaratory action whether any agricultural land is being used in violation of the act. The new Section 11a makes it a violation of the act for any person knowingly to enter into an agreement whereby an ineligible alien will receive directly or indirectly the beneficial use of agricultural lands or proceeds from the sale of crops produced on such land even though the agreement is made in the name of another person, or for any person to permit any such alien to receive any such benefits. The new Section 12a provides for the admission in evidence of certified copies of public records relevant to the questions of the person's eligibility to citizenship and place of birth.

Senate Bill No. 140 is primarily aimed at alien guardians of estates involving interest in lands, but at the same

time it makes more rigid the effect to the provisions of the alien land law on all transactions involving interests in lands. The effects of the new law on the use of guardianship proceedings to avoid the provisions of the alien land law will largely depend on the courts' determination of what constitutes a beneficial interest in the alien guardian by reason of his handling of the guardianship estate. The new law will probably discourage most attempts to evade the regulations of the California alien land law.

/s/ Philip M. Glick

Philip M. Glick
Solicitor

WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

February 16, 1944

MEMORANDUM FOR THE ASSISTANT DIRECTOR

May I mention to you a minor point that has troubled me a little, in connection with the issuance of Manual and Handbook material. (I don't know whether your Manual Committee is still functioning.)

Our early system of issuing individual Administrative Instructions had one important advantage, it seems to me, over our present system of issuing Manual and Handbook material, and that was that each Instruction covered new material. It was either a brand new Instruction or it was an amendment and revision of an Instruction, and in the latter case it was limited to the new material. Only rarely was an Administrative Instruction a complete recodification of earlier material. The result was that when an Administrative Instruction hit one's desk, one felt that he must read it because it was new.

For a number of months, Manual and Handbook material was admittedly not new -- it was merely a restatement in new form of what had earlier been issued as Administrative Instructions. Some of the material was, of course, changed in the course of manualization, but it was difficult, without study, to isolate the new material.

Still worse, when revisions or amendments of Manual or Handbook material are now issued, we receive substitute pages which are out of context and rather difficult to understand by themselves.

I am inclined to believe that these facts are creating a greater tendency to assume that Manual and Handbook material that now hits the desk is largely or wholly restatement of old stuff, and hence doesn't need reading.

I discussed this problem recently with Mr. Stephens and he suggested two solutions: 1. That the Administrative Notice specify the new or troublesome material contained in each Manual or Handbook release; 2, That we might recommend to the Project Directors that each of them delegate to some one man on the Project the responsibility for making a special study of the Manual and Handbooks and of noting each new batch of material as it arrives and of calling to the special attention of the Project Director and the appropriate staff member all material that is new or otherwise requires special attention.

I realize that we have been calling attention to new material in the Administrative Notices that accompany the new Manual and Handbook material. I believe, however, that our Administrative Notices have been so terse that they don't serve their purpose, with a few exceptions. I believe our Administrative Notices will need to become much more elaborate memoranda which will state, although in summary form, the substance of the new material and, in appropriate cases, will discuss the reasons for the new policy.

I think, also, that Mr. Stephens' second suggestion is worth looking into.

Philip M. Glick

Solicitor

Solic.

WAR RELOCATION AUTHORITY
Office of the Solicitor
WASHINGTON

December 14, 1944

TO: Mr. Rex Lee

SUBJECT: Possible legislation for indemnity for losses from evacuation

The question of indemnity for losses suffered by evacuees as a result of the evacuation pursuant to the Army exclusion orders is a matter that rests entirely with the Congress of the United States. At the present time there is no law of procedure for filing or paying such claims, so that if claims are to be paid, Congress will have to enact special legislation for that purpose. It is possible that Congress will do so sooner or later -- perhaps after the war -- for in the past, indemnity for losses arising out of Government action of an emergency of unusual nature has not infrequently been provided by passing a special law to remedy the situation so that the losses are not borne by all.

We of course have no idea what the provisions of such a law might be. It seems reasonable to believe that if a law were passed it would provide for a determination in each case of the actual loss suffered and base its provisions for indemnity on that amount. It is hardly reasonable to believe that events subsequent to evacuation and which have nothing to do with the losses suffered, should in any way affect eligibility for indemnity. For example, it would seem very unlikely that indemnity would be made to depend upon either remaining in, or relocating from a relocation center, since that has nothing to do with the loss suffered at evacuation. Even death should make no difference as far as recognition of the claim is concerned, and payment in such case would most certainly go to the family of the deceased claimant.

If a law is passed it seems reasonable to predict that it will seek to pay only losses resulting from evacuation. Losses caused by the unusual economic situation brought about by the war program, normal depreciation of property, or any other loss that would have resulted whether there was evacuation or not, would no doubt be excluded from consideration.

These are, of course, only conjectures. There is no assurance, and no present indications, that any such legislation will be passed at all. I believe that this should be emphasized to any evacuees who raise any questions about claims against the Government, so that they will labor under no delusions on the matter.

/s/

Edwin E. Ferguson
Solicitor

M-861

千九百四十四年十二月十四日
華府W.R.A法律事務所より
レックスリー氏に宛たる書

題目＝撤退に依る損失に対する賠償の規則。

軍部の撤退令に從って撤退したる結果に依り撤退者が受けたる損失に対する賠償の疑問は全く合衆国議会の上に掛って居る事項である。現在に於ける斯かる要求を支払ふ事や又要求の手續をする事に関し法則無き為め若し要求が支払はる可き時には其の目的の為め議会は特別の立法を制定せねばならぬ故之れは議会が近々の内或は後日又は戦後に於て立法制定するであろう。

過去に於て非常なる性質の緊急事件に対する政府の行動に依る損失に対する賠償は總ての人々に依り損害を受けざりし地位を矯正す可き特別法則を制定す可く稀に準備してある。勿論我等は其の法則が何であるか其の思想を持たぬ。之れは若し法律が適過せしなれば之れは事実の損害を受け又其の損害の高に從った賠償の準備を決定す可く備へられて居る。之れは撤退の結果に依り受けたる損害に付き賠償を受く可き事に付何事も無き事を信ず可く稀に適当である。例へば之れは転住所に残るか又は出所して転住せしに関して賠償さる可きでは無いと思はれる之れは撤退に依り受けたる損害に何の関係も無き故である。例へば死亡が在っても此の要求に関する再認識に付き又此の事件に対する支払ひが死亡者の遺族に行く事が最も確実であっても何の変化も無い。若し法律が適過した時に之れは撤退せし事に依り受けたる損害にのみ支払はれると云ふ事を予告す可く適当である。戦争に依る非常時経済的損害や普通的財産價値低下又は撤退如何に拘らず受けたる外の損害は疑ひも無く此の報酬より除外さる可し。是等は単に一個の臆測に過ぎぬ。そこには何の保證も無く又總てに於て何の法律が適過さる可き暗示も無し。私は誤信を以て政府に対し要求をする撤退者の或る人々へ明瞭に言ひ聽かさる可き事と信ずる

法律家エド・フアガソン

Memorandum 1 (1945)

b/

January 11, 1945

MEMORANDUM TO: R. B. Cozzens
Assistant Director

ATTENTION: Harold I. McGrath
Relocation Officer

SUBJECT: Opinions of Attorney General of California having bearing on residential requirements for welfare.

Mr. McGrath requested that we check the Opinions of the Attorney General of California to determine whether any such Opinion dealt with the question of residence requirements for welfare purposes.

We find only one Opinion dealing directly with that subject (Opinion No. NS-5633 discussed below) but Opinions on other subjects involving residence requirements are worthy of review in this connection.

Opinion No. NS-4317, holds that persons at Manzanar are there under compulsion of the Government and therefore do not acquire voting residence in Inyo County. Residence referred to in Sec. 52 Political Code is "a residence or domicile of choice", and the Opinion points out that it is well established that a person cannot acquire such residence by an act done involuntarily or under legal compulsion.

Opinion No. NS-4689, states that domicile is changed from one place to another only upon the abandonment of the first place of domicile with the intent not to return and by taking up a residence in another place with the intention of permanently residing in that place. Merely living at a place is not of itself sufficient to establish a legal residence or domicile.

It is therefore a question of fact in each case whether such an evacuee has abandoned his former residence or domicile in California. If he has not done so and intends to return to this State after the war, he has not lost his residence qualifications for bringing an action for divorce in this State.

(In this connection it should again be noted that in no case can an evacuee be considered to have lost his previous domicile as a result of residence in a Relocation Center.)

Opinion No. NS-4839, states that evacuees involuntarily removed from the state are still "householders" in the County of original residence, and as such, entitled to $100 exemption on personal property within the state.

In this Opinion the Attorney General points out that persons of Japanese descent were not the only ones concerned in this ruling, many others having been temporarily dislocated by reason of the war. This fact would be equally applicable with regard to welfare applicants and would no doubt have a strong influence upon any Attorney General's decision respecting residence for welfare purposes.

Opinion No.NS-5633, deals with residence requirements in welfare cases; however, the case calling forth the Opinion did not involve a person of Japanese descent. The Attorney General concluded that in determining residence in the state or county, time spent in an institution was not to be considered. The applicable code provisions are cited as follows: Welfare and Institutions Code Sec. 2555: A resident of California (for welfare purposes) is a person who comes within the following:

(a) Who has lived continuously in the State for a period of three years with the intent to make it his home; and

(b) Who during the three year period aforementioned has not received any public or private relief or support from friends, charitable organizations, or relatives other than legally responsible relatives; but time spent in a public institution or on parole therefrom shall not be counted in determining the matter of residence in this or another state; and

(c) Who has not lost his residence by remaining away from this State for an uninterrupted period of one

year. Absence from the State for labor or other special or temporary purpose does not occasion loss of residence.

Sec. 2556. A person who is a resident of California within the meaning of this chapter is a lawful resident of the county wherein he applies for aid if he has resided therein continuously for one year immediately preceding his application for assistance. If the applicant has no such residence, the county wherein he last resided continuously for one year immediately preceding his application shall be responsible for his support. If the applicant has no such year's residence within three years preceding application, that county shall be responsible for his support wherein he was present for the longest time during the three year period. Time spent in a public institution or on parole therefrom or in a private charitable institution shall not in any case be counted in determining the matter of county residence.

As you will readily see, none of these Opinions directly settles the various questions raised by the enforced absence from the State of original domicile and the effect of such absence on an evacuee's right to welfare assistance. However, in view of the foregoing Opinions it would appear to be somewhat difficult for the Attorney General to justify an Opinion which would declare enforced residence in a Relocation Center to be ground for denial of welfare assistance.

As to the three year requirement, it must be considered a highly doubtful question as to whether a court would interpret the phrase "Who has lived continuously in the state for a period of three years....." (Sec. 2555 (A) above) as the equivalent, in the case of evacuees, of "Who has been domiciled continuously in the State for a period of three years.....". However, as specific cases arise and full details can be given us as to all the facts surrounding the residence of the person involved, we shall be glad to examine into the court decisions, particularly in the coast states.

Edgar Bernhard
Assistant Solicitor

Memorandum 2 (1945-)

January 15, 1945

MEMORANDUM TO: Mr. Charles Miller
Deputy Assistant Director

ATTENTION: Mr. Harold McGrath
Relocation Officer

SUBJECT: Residence requirements for welfare relief in Washington and Oregon

In Washington and Oregon, most provisions for welfare have been superseded by the Social Security Acts.

The residence requirement in Washington for old-age assistance is as follows:

"Has been a resident of the State of Washington for at least five years within the ten years immediately preceding his application for old-age assistance." (Remington's Revised Statutes, Section 9998-3 (C).)

In so far as concerns old-age assistance, it appears that persons evacuated from Washington would not lose their qualifications by reason of the time spent in assembly and relocation centers, since one cannot be considered to have lost his residence by enforced residence elsewhere.

The residence requirements for assistance to the blind, however, read somewhat differently. Section 10007-6 (d) is as follows:

"Who has resided in this state for five years during the nine years immediately preceding the date of application, or who suffered loss of sight while a resident of this state and has resided continuously in this state since such loss of sight; and who has resided in this state continuously for one year immediately preceding the date of application."

It is possible that "residing" in the state might be interpreted to mean physically present within the state. On the other hand there is indication that when "residing within the state" is used it is intended to mean legal residence not contemplating continuous physical presence within the state. The latter is the interpretation usually adopted by the courts.

Section 9992-104 providing for aid to dependent and crippled children reads as follows:

"To be eligible for aid granted under this act, it shall be established to the satisfaction of the department of social security that the parent has been a resident of the state for one year, or that the child of such family has resided in this state for a period of one year immediately preceding application for such aid, or was born within the state within one year immediately preceding the application if his mother has resided in the state for one year immediately preceding his birth."

The Washington provision with regard to residence for voting purposes reads in part as follows:

"For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States.... nor while kept at any almshouse or other asylum, nor while confined in any public prison, excepting when serving out a sentence in the penitentiary for an infamous crime."

The above provision indicates that it is probably the general intent of the legislature to preserve the residence of those removed from the state against their will.

In this connection it was held in the case of Duryea v. Duryea, 296 Pac. 987 (Idaho) that a resident of Idaho in jail in Nevada nevertheless retained his domicile in Idaho. And in Gray's Estate, 250 Pac. 422, (Okl.) the court held that permission to a guardian to place his ward in a sanatorium in another state does not change the residence of the ward in the absence of language showing such an intention on the part of the county court.

The Oregon Social Security Act contains substantially the same requirements of residence as does the Washington Act in so far as concerns old-age assistance and aid to the blind. However, it contains a provision with regard to general assistance under those parts of the act not financed in whole or in part by the United States which reads in part as follows:

"No person shall be eligible for general assistance under this act unless he has lived within the county for a period of one year, and within the state for a period of three years preceding the date of application for general assistance; provided, however, that casual absence from the county or state shall not be deemed as not living in the county; provided further....public welfare commission may in their discretion provide general assistance in unusual or emergency cases for persons who have lived in the county for less than a year, or in the state less than three years.

"Any person absent from the state of Oregon for one year shall lose settlement in the state and any person absent from the county for one year shall lose settlement in the county for the purposes of this act."

Oregon Compiled Laws, Sec. 126 - 109.

A provision concerning nonresident public charges reads as follows:

Sec. 127 - 903 "Duty to return to home state out of Oregon institutions. A person shall be deemed to be a resident of this state within the meaning of this act who shall have lived continuously in the state for a period of two years and who has not acquired a residence in another state by living continuously therein for at least two years subsequent to his residence in this state; provided, however, that the time spent in a public institution or parole therefrom shall not be counted in determining the matter of residence in this or another state."

We believe that the courts would be inclined to interpret provisions requiring residence as not precluding those whose residence has been interrupted by enforced absence such as evacuation. However, the most doubtful cases

would be those arising under provisions which call for "living" within the state or county rather than those which call for domicile or residence within the state or county.

If we were permitted further time we should be glad to attempt to find decisions interpreting the use of the word "living" in the various contexts set forth above as compared with judicial interpretations of the words "residing" and "domicile" on which the court decisions are fairly consistent.

Edgar Bernhard
Assistant Solicitor

WAR RELOCATION AUTHORITY

Office of the Solicitor

WASHINGTON

February 16, 1945

Memorandum to: John Provinse

Subject: Revision of S. 816, 78th Congress, to permit naturalization thereunder of persons heretofore ineligible for citizenship.

The Acting Director has asked me to prepare for you a revision of the bill introduced by Senator Green in the last session of Congress (S. 816 introduced March 5, 1943), which would broaden its provisions to permit the naturalization of persons otherwise ineligible for naturalization whose husbands, sons or daughters have served in the armed forces during the present war. Such a revision is attached. New language is underscored and deleted language is crossed out.

Section 303 of the Nationality Act referred to in the opening clause is the racial requirement limiting the right of naturalization to white persons, persons of African nativity or descent, descendants of races indigenous to the Western Hemisphere, and Chinese persons or persons of Chinese descent. Section 326 of the Nationality Act also referred to contains certain restrictions upon the naturalization of enemy aliens in time of war.

Under this revision, Filipinos, Koreans, Hindus and other Asiatics not of the white race, and persons of enemy nationality, including Japanese aliens on the mainland and in Hawaii, who have husbands, sons or daughters in the armed forces, would become eligible for naturalization.

H. R. 1810, introduced by Representative Hartley in the present session of Congress, also would provide for naturalization, without declaration of intention, of certain non-citizens with relatives in the armed forces. A draft of H. R. 1810 revised to make it also applicable to persons otherwise ineligible to citizenship is also attached. The chief difference between the revised Green bill and the revised Hartley bill are:

1. The Green bill is applicable to persons with husbands, sons, or daughters in the armed forces; the Hartley bill is limited to <u>parents</u> of <u>citizens</u> in the armed forces.

2. The Green bill applies only where the husbands, sons, or daughters served in the armed forces after December 7, 1941; the Hartley bill includes service from September 1, 1939. However, the Green bill also seems to apply to service during the first World War.

3. The Hartley bill requires petitions for naturalization under it to be filed within one year after the termination of the war; the Green bill contains no such time limitation.

Under both revisions, all requirements of the naturalization laws must be met except those containing the racial restrictions and the restrictions on naturalization of enemy aliens, those requiring the filing of declarations of intention, and compliance with certain educational requirements. Requirements of the naturalization laws which still must be met include residence in the United States for five years, residence in the State or Territory for six months, legal entry into the United States and proof of good moral character and attachment to the principles of the Constitution of the United States.

EDWIN E. FERGUSON

Edwin E. Ferguson
Solicitor

Attachments - 2

A B I L L

Permitting the naturalization of certain persons not citizens whose husbands, sons, or daughters have served with the land or naval forces of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Nationality Act of 1940, as amended, is hereby amended by adding thereto a new title as follows:

"TITLE IV

"Sec. 801. Notwithstanding the provisions of sections 303 and 326 ~~(a)~~ of this Act, any person not a citizen ~~who is not racially ineligible to become a naturalized citizen~~ whose husband, son, or daughter has served honorably with the land or naval forces of the United States during the World War or at any time during the period beginning on December 7, 1941, and ending upon the date of the termination of the present war, and, if separated from such service, has been separated under honorable conditions, may be naturalized upon compliance with all ~~the~~ other requirements of the naturalization laws, except that no such person shall be required to be able to speak the English language, sign a petition in his own handwriting, or meet any other educational requirements, and no declaration of intention shall be required.

"Sec. 802. The Commissioner, with the approval of the Attorney General, shall prescribe and furnish such forms, and shall make such rules and regulations, as may be necessary to carry into effect the provisions of this title."

H. R. 1810

79th Congress
1st Session

IN THE HOUSE OF REPRESENTATIVES

January 29, 1945

Mr. Hartley introduced the following bill; which was referred to the Committee on Immigration and Naturalization

A B I L L

Permitting the naturalization of certain persons not citizens whose sons or daughters have served with the land or naval forces of the United States.

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That the Nationality Act of 1940, as amended, is hereby amended by adding thereto a new title as follows:

"TITLE IV

"Sec. 801. Any person not a citizen of the United States whose son or daughter is a citizen of the United States and has served or is serving honorably in the military or naval forces of the United States during the present war and who, if separated from such service, was separated under honorable conditions, may be naturalized upon compliance with all the requirements of the naturalization laws, except that no declaration of intention shall be required, and the existing educational requirements be waived, and the provisions of sections 303 and 326 of this Act shall not apply to a petition filed under this section: Provided, That the petition is filed not later than one year after the termination of the present war. For the purposes of this section, the present war shall be deemed to have commenced on September 1, 1939, and shall continue until such time as the United States shall cease to be in a state of war."

Memorandum #3 (1945)
Donald I. Hara
Granada

January 29, 1945

MEMORANDUM TO: R. B. Cozzens
Assistant Director

SUBJECT: Summary of laws of California pertaining to renewal and termination, etc. of leases

At Mr. McGrath's request, we have prepared the following summary. It may also prove helpful to relocation officers and others who may have occasion to advise evacuees with respect to problems concerning the renewal or termination of leases, and the types of notices that must be given in appropriate cases. We have attempted to cover only those situations which may be expected to arise most often. It is not intended that this summary will do more than provide a basis for furnishing the evacuee general information as to some of his legal rights and obligations.

Code of Civil Procedure.

Section 1161:
A tenant of real property is guilty of unlawful detainer (i.e. holding unlawfully):

1. When he continues in possession, in person or by subtenant, without the permission of his landlord, after expiration of the term of his lease; or

2. When he continues in possession, in person or by subtenant, without the permission of his landlord after default in the payment of rent, and three days' notice in writing requiring payment of the rent or surrender of the property, shall have been served upon him (and if there is a subtenant occupying the premises, also upon such subtenant).

(Such notice may be served at any time within one

year after the rent becomes due except that in all cases of tenancy upon agricultural lands where the tenant has held over and retained possession for more than sixty days after the expiration of the term without any demand of possession or notice to quit by the landlord, he shall be entitled to hold under the terms of the lease for another full year.) Or

3. When he continues in possession, in person or by subtenant, after failing to perform other conditions or covenants of the lease, including any covenant not to assign or sublet, and three days' notice in writing, requiring performance or surrender of the property, shall have been served upon him and upon his subtenant if one is in possession. Within three days after the service of notice, the tenant, subtenant, or any other person interested in continuance of the lease, if the breach is correctable, may perform the conditions or covenants or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture.

(If the evacuee is himself only a tenant he may nevertheless follow the same procedure to obtain possession from his subtenant, servant, employee or agent.) Or

4. When he (or his subtenant) commits waste upon the premises, contrary to the conditions or covenants of his lease or is guilty of some other breach of the lease which is not correctable (other than nonpayment of rent, for example) and the landlord serves a three days' notice to quit.

Section 1162:

The notices mentioned above may be served in any of the following ways:

1. By handing a copy to the tenant personally; or,

2. If he be absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion

(preferably 16 years or older) at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or,

3. If his places of residence and business can not be ascertained, or a person of suitable age and discretion can not be found there, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found, and also sending a copy through the mail addressed to the tenant at the place where the property is situated. (Service upon a subtenant is made in the same manner.)

If, after service of notice as provided above, the tenant does not surrender possession of the premises, the landlord may then file suit to have the tenant evicted.

Civil Code.

According to Section 793, Civil Code, if a landlord who has an express right to reentry wishes to do so, he may maintain an action for possession at any time after the right of reentry has accrued, without giving any notice; however in view of a somewhat contradictory provision (Section 791) we would suggest that a three-day notice be served.

Section 1943:
A hiring of real property, other than for lodging or dwelling purposes, is presumed to be for one year from its commencement, unless otherwise expressed in the agreement.

Section 1944:
A hiring for lodging or dwelling purposes for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

Section 1945:
If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor

accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case, one year.

In applying the provisions of the above paragraph it should be borne in mind that where agricultural lands are concerned, the provisions of the underscored sentence on Page 2 may be applicable. That is, where a tenant of agricultural land has held over for more than sixty days beyond the expiration date of his lease without demand for possession or notice to quit he shall be entitled to hold under the terms of the lease for another full year. This provision is applicable even though the tenant owes rental for the previous year.

Section 1946:

Where the term of any lease is not specified by the parties, it is deemed to be renewed automatically in the absence of notice from one of the parties to the other. The length of the term (and of the renewal) in the case of real property other than lodging and dwelling houses, is presumed to be for one year. (See Section 1943 above.) In such cases, thirty days notice of termination must be given to prevent automatic renewal. In the case of a hiring of lodging and dwelling houses (see Section 1944 above) the length of the term (and of the renewal) is deemed to be the period for which rent is payable. Thus if rent is payable weekly, the term (and hence the renewal) is presumed to be from week-to-week; if payable monthly from month-to-month; but in no case more than a year. Also, if the term is from week-to-week, then the notice of termination (in the absence of an agreement between the parties) must be served at least a week in advance; and if from month-to-month the notice of termination must be served at least a month in advance.

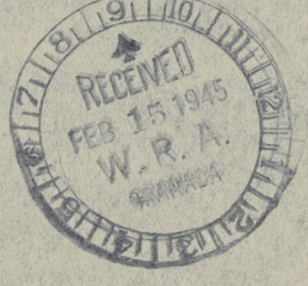
(In the rare case when not only has no period of time been agreed upon for termination of the tenancy, but also no term has been fixed by the payment of rent at definite times, the notice of termination must be for a period of thirty days.

The foregoing is a summary of the main provisions of the California law touching upon automatic renewal of

leases, termination of leases, and notices. We urge that no notice be served or other action taken without consultation with an attorney.

EB

Edgar Bernhard
Assistant Solicitor


RECEIVED
FEB 15 1945
W. R. A.
MANZANAR

Memorandum #7 (1945)

April 17, 1945

MEMORANDUM TO: Mr. Charles Miller
Deputy Assistant Director

SUBJECT: Laws of California, Washington, Oregon and Arizona pertaining to the placement of minor children in work homes or foster homes.

There are a number of evacuee minor children who have received, or will receive, offers to go into foster homes. Some may go in contemplation of adoption, while others may be invited to go into foster homes as servants. Many states have enacted laws designed to protect such children from various forms of exploitation, and you have asked for a resume of these laws in the states mentioned.

CALIFORNIA

Section 1620, Welfare and Institutions Code contains the following provision:

"No person, association, or corporation shall, without first having obtained a written license or permit therefor from the State Department of Social Welfare or from an inspection service approved or accredited by the department:

(a) Maintain or conduct any institution, boarding home, day nursery, or other place for the reception or care of children under 16 years of age, nor engage in the business of receiving or caring for such children, nor receive nor care for any such child in the absence of its parents or guardian, either with or without compensation,

(b) Engage in the finding of homes for children under 16 years of age, or place any such child in any home or other place, either for temporary or

permanent care or for adoption."

Subsequent sections provide for inspection, licensing, etc., and that persons failing to comply with the requirements are guilty of a misdemeanor.

Section 1620 applies to persons who merely take one child into their home, whether in contemplation of adoption or for employment. It is not necessary that a person be in the business of boarding and placing children to come within the purview of the statute. Therefore it is required in every case in which a child under 16 years of age is taken into a private home, in the absence of its parents or guardian, that the foster parent or employer obtain a license from the State Department of Social Welfare and submit to periodic inspection by the county welfare representatives to whom the responsibility for inspection is delegated by the State Department.

WASHINGTON

Remington's Revised Statutes of Washington, Sections 1700 - 1701, provide that it shall be unlawful for any person, firm, society, association, or corporation, except the parents, to assume the permanent care, custody or control of any child under the age of majority (21 years) unless authorized so to do by a written order of a Superior Court of the state. It shall likewise be unlawful, without the written order of the Superior Court having first been obtained, for any parent to relinquish or transfer to any person, firm, society, association or corporation, the permanent care, custody or control of any child under the age of majority.

Section 1700 - 6 provides that any person violating provisions of the act shall be guilty of a gross misdemeanor.

OREGON

Sections 126 - 318 - 319 - 320, Oregon Code, provide for the regulation and control of foster homes by the State Welfare Commission. Application to operate

a foster home (which includes the home of a person who has under his care one or more children under 18, not related to him) must be made to the Commission. Upon investigation and approval, a certificate is issued for a period of one year. Any person operating a foster home without such certificate is guilty of a misdemeanor.

ARIZONA

The Arizona provisions regulating the placement of children in foster homes are contained in Sections 70 - 501 to 70 - 517, Arizona Code.

Provision is made for licensing and investigation of child welfare agencies. Licenses must be renewed each year. Licensed agencies may accept the care, custody and guardianship of children during their minority upon the order of a court having jurisdiction. Such agencies if authorized by their licenses may place children in family homes for care or for adoption.

Except in proceedings for adoption, or where a court orders a child placed in an agency, or parents or an unmarried mother give legally executed relinquishment of parental rights, a parent may not voluntarily assign nor otherwise transfer to another his rights and duties with respect to the permanent care, custody, and control of his child under sixteen years of age.

Where one or more children under sixteen are placed in a family home, separated from parent or guardian and not related to the person maintaining the home, and are cared for or maintained, for compensation or otherwise, such home is deemed to be an unsupervised foster home. A person is not allowed to conduct an unsupervised foster home without a certificate from the Department of Social Security and Welfare. No such certificate may be issued until investigation and approval by the Department or by a licensed child welfare agency acting for the Department.

Persons violating any of the provisions of the act are guilty of a misdemeanor.

EB

Edgar Bernhard
Assistant Solicitor