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WAR RELOCATION AUTHORITY  
SOUTHERN REGION  
LITTLE ROCK, ARKANSAS

*Ferguson*

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AEOB  
K.S.*

Opinion LR-1

Oct. 8, 1942

To: E. B. Whitaker, Regional Director  
Attention: Ray D. Johnston, Project Director  
Subject: Shop Licenses for Community Enterprises at Relocation Centers.

Mr. Ray D. Johnston, Project Director at the Rohwer Relocation Center, has requested an opinion concerning the need for state licenses as a condition to operation of beauty parlors and similar services at relocation centers. It is the opinion of this office that such licenses are not required.

Mr. Johnston calls attention to the fact that Solicitor's Opinion No. 21 states that "evacuees may legally perform services for residents of relocation centers in occupations to which State license and regulatory laws are usually applicable without complying with such laws." Dr. Thompson points out in his letter accompanying the file that this rule holds for Caucasian employees of the War Relocation Authority as well as for evacuee workers. That is correct.

The basic legal theory underlying these conclusions is not that the federal government will exercise exclusive jurisdiction over the relocation centers (see Solicitor's Opinion No. 16) but rather that interference by state or local governments with performance of federal functions will not be permissible. In the case of the War Relocation Authority, the federal function involved may well be given special protection, because it involves an exercise of the war power, which is obviously a federal function of absolutely first importance. Incidentally, most of the earlier authorities relied upon in Solicitor's Opinion No. 21 were decisions involving persons whose situation is more comparable to that of Caucasian employees of the War Relocation Authority than to that of the evacuees. See Arizona v. California, 283 U.S. 423 (1931); Hunt v. United States, 278 U.S. 96 (1928); Ohio v. Thomas, 173 U.S. 276 (1899).







E.B. Whitaker - 2

The correctness of this conclusion for the State of Arkansas is completely confirmed by a decision of the Arkansas Supreme Court handed down on Monday, October 5, 1942, in the case of Dr. M. B. Lynch v. Hon. E. G. Hammock, Chancellor of Desha Chancery Court. It should be noted that this case was decided without a formal opinion, but it will undoubtedly be accepted by the licensing authorities of the state as conclusive. The fact that the physician, as to whom it was held that no state license was required, was employed by the private contractor engaged in construction of the relocation center rather than by the War Relocation Authority or one of its constituent enterprises, makes this decision even stronger than Solicitor's Opinion No. 21.

The Arkansas law requires no shop licenses for beauty parlors, but only personal licenses for the operators themselves. The Arkansas law governing barber shops requires both personal licenses and shop licenses. That is true of the law of this state in reference to a few other types of personal service establishments, though no useful purpose will be served by enumerating them here. Solicitor's Opinion No. 21, along with the decision in the Lynch case, makes it absolutely certain that personal licenses would not be required of either evacuee or Caucasian employees working on the relocation centers. The same principle exactly applies to shop licenses, inasmuch as state inspection and regulation of shops would interfere with the performance of the federal function involved just as much as would personal licensing. The legal authorities cited in Solicitor's Opinion No. 21 bear with equal directness on both types of licensing.

In order to check on the acceptance of this opinion by state licensing authorities, I called upon the secretary of the State Barber Board, and found that his opinion was in exact conformance with that herewith stated. He is committed to the idea that neither shop licensing nor personal licensing is necessary for barber shops at the relocation centers.

There is nothing inconsistent between this opinion and the conclusion independently arrived at that community enterprises are liable for the payment of state sales taxes. The distinction is on the degree of interference with the federal function involved. See James v. Dravo Construction Company, 302 U.S. 134. The interference involved in collection and payment of the sales tax, and possibly of other taxes levied for revenue purposes only, is deemed not substantial.

Sincerely yours,

/s/ Robert A. Leflar

Robert A. Leflar  
Regional Attorney

RALeflar:gw







815 Pyramid Building  
Little Rock, Arkansas

Opinion LR-2  
October 8, 1942

To: E. B. Whitaker, Regional Director

Attention: Ray D. Johnston  
Paul Taylor  
Roy Sellers

Subject: Organization of Temporary Community Enterprises.

The problem of organization of temporary community enterprises has been raised frequently by administrative officials both at the Regional Office and at the centers. The successful maintenance of such enterprises, both for the sale of goods and the rendition of services, is of course a matter of first importance both financially and in respect to the morale of the center residents. If such stores and services are not available, the psychological attitude of the evacuees is bound to deteriorate, and the same thing will happen if the enterprises are not operated fairly and successfully.

Furthermore, the temporary set-up must continue for a considerable period before a permanent cooperative association can be completed, because an educational program will be desirable to acquaint the evacuees with the nature of cooperative associations, also because the legal steps in establishing a suitable cooperative association will inevitably consume some time.

In some respects the problems are the same as with the permanent cooperative associations hereafter to be organized. For one thing, it is desirable to avoid having the evacuees feel that their enterprises are being too much managed by the W.R.A. staff. They should be made to feel that the enterprises are their own, both in respect of ownership and management. The psychological importance of this in the light of announced W.R.A. policies is evident. An additional very practical reason for the same thing, however, exists. The community enterprises might conceivably have to place all their receipts directly in the United States Treasury, if they appear to be engaging directly in federal activity or using federal funds as such. If this should be



required by the General Accounting Office, it would practically cripple the community enterprise program. That is one reason why it was decided as a matter of policy to have the evacuees rather than W.R.A. employees operate the enterprises. This point is discussed at some length in Regional Opinion SF-1 by E.E. Ferguson, dated May 2, 1942.

The question of the most advantageous form and manner of operation of these temporary enterprises has been discussed informally on various occasions. ~~Three~~ possible forms of organization have been mentioned. These are (1) a store without owners, (2) a corporation, and (3) a simple trust arrangement. The conclusion has been reached that the trust arrangement would be most desirable.

A store without any legal owner presents numerous difficulties. If there is no owner there would be no one who could legally convey the store property to the cooperative association when it is organized. The taxing authorities would have no one to look to, and this might lead to involvement of the individuals in charge of the operation of the stores. It would be difficult to get insurance on the stock of merchandise or against public liability. Such a store might more readily be deemed to involve a federal activity. The handling of credit problems would at least theoretically be more difficult. In general, this form of organization seems undesirable, even though it has been employed in several of the other relocation centers.

The organization of a corporation to own and operate the temporary enterprises would involve some unnecessary delay and expense, legal difficulties and possible personal liabilities. Such a corporation would have to be dissolved when the cooperative association takes over the business.

A simple form of trust organization seems feasible. Business trusts are recognized as valid under Arkansas law. Betts v. Hackathorn, 159 Ark. 621, 252 S.W. 602, 31 ALR 847; Oil Fields Corp. v. Dashko, 173 Ark. 533, 294 S.W. 25; cert. denied, 275 U.S. 548. Names such as "Rohwer Enterprises" or "Jerome Enterprises" could be given to the organizations. Three or four good, honest evacuees, with possibly one or two W.R.A. employees, might serve as trustees, with specific provisions in the trust instrument to the effect that they would transfer the assets and liabilities of the enterprises to the cooperative association when it is organized, that they will have no personal liability by reason of their trusteeship, that management and control of the business should be in persons approved by the project director and in accordance with the governing Administrative Instruction (No. 26)



and other rules and principles laid down by the W.R.A., that there should be a thorough audit of all aspects of the business, etc. Each contract made under this set-up should expressly provide that the trustees should not be personally liable thereon, and that liability should be limited to assets of the business. The cooperative association hereafter to be organized at the center should be named as beneficiary of the trust. This will have a distinct psychological advantage, in that it will assure the evacuees that the temporary enterprises are actually being operated "in trust" for them. Some question has been raised as to whether a non-existent entity may ever be the beneficiary of a trust, but there is good authority to the effect that this is permissible. See, for example, the American Law Institute Restatement of the Law of Trusts, sec. 112e, which makes the following statement:

"A trust may be created in favor of a corporation not organized at the time of the creation of the trust, if the corporation must be organized and the interest vest within the period of the rule against perpetuities."

A simple form for such a trust agreement is appended hereto. I believe that it is self-explanatory. I am sending a copy of it, along with a copy of this opinion, to the Washington Office at once, and they will have time to make important objections to its form before we get around to its final execution. You should, therefore, regard it as a tentative form, but you can proceed with the making of local arrangements at the centers on the assumption that they will be based on this form or something substantially like it.

It is highly important that adequate property and public liability insurance be secured and maintained consistently. All sales should be for cash, and other principles laid down by Administrative Instruction No. 26 should be rigidly complied with, insofar as they are applicable to temporary enterprises.

The question of liability for state and federal taxes has been raised. You have already been advised that the state sales tax, cigarette tax, and similar transaction taxes should be paid, and you have arranged to secure the permits necessary in this connection. These should, of course, be kept alive. As to liability for state and federal income taxes on the profits of the temporary community enterprises, and for state property taxes, the problem is more difficult. The cooperative association eventually to be organized will, of course, have certain exemptions from one or all of these tax levies. We have not reached any conclusion as yet in this office as to whether such



exemptions will exist in favor of the temporary enterprises by reason of the fact that all profits will go to the permanent cooperative association hereafter organized. This is a problem common to the temporary enterprises in all ten of the relocation centers throughout the United States, and I believe it is one upon which the Washington Office should make some study and arrive at a conclusion which will be uniform for all the centers and which, incidentally, might be checked with the officials of the Internal Revenue Department. I am at once making this recommendation to the Washington Office. In the meantime, it seems to me that the only safe thing to do would be to regard a portion of your profits as a reserve for possible payment of such taxes. If such payment is not necessary, the reserve will simply become a part of the capital of the permanent cooperative association, so that there will be no ultimate loss to the evacuees.

The problem of financing the temporary enterprises was the subject of a conference previously held with Mr. Whitaker and Mr. Sellers, in which it was concluded that the limited use of credit dictated by good business judgment would be essential to conduct of the enterprises. While this is a matter of administration rather than a legal question, it cannot be too strongly emphasized that the careful use of credit in making purchases is necessary. It should be limited to purchases of goods as to which a quick turnover is practically certain. This involves primarily the exercise of good business judgment in making purchases and the ascertainment in advance of the needs of the evacuees so that the stock procured for sale will not in any event be left on your hands permanently.

Incidentally, I am attaching hereto copies of (1) a letter written by Lewis Sigler to Philip M. Glick on July 8 concerning organization of temporary community enterprises at Tule Lake and Manzanar, and (2) a statement by Fred Ota, evacuee manager of community enterprises at Poston. (These have already been handed to Mr. Sellers.) They are descriptive of the temporary enterprises conducted at the three centers mentioned and of some of the problems involved.

Signed:

Robert A. Leflar  
Regional Attorney



## DECLARATION OF TRUST

WHEREAS, the Rohwer Relocation Center is to be populated by approximately ten thousand persons who will need and desire services and merchandise other than those furnished to them by the War Relocation Authority, and

WHEREAS, the evacuees residing at the Center will, as soon as possible, organize a cooperative association which will serve their needs for services and supplies not furnished them by the War Relocation Authority, and

WHEREAS, the organization of a cooperative association by the evacuees will necessarily take a considerable length of time, and

WHEREAS, the needs of the evacuees for such services and supplies must be met pending the organization of a cooperative association,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS That we,

\_\_\_\_\_  
\_\_\_\_\_  
and \_\_\_\_\_, all residents of the Rohwer Relocation Center, being vested with title in and to the business known as Rohwer Enterprises conducted at the Rohwer Relocation Center, and in and to the current stock in trade thereof, do hereby declare ourselves to be trustees thereof, and do undertake to hold same, and all the profits and proceeds thereof, as trustees for the use and benefit of the cooperative association now planned and hereafter to be organized as a legal entity under the law, which cooperative association is to own and operate the Rohwer Enterprises for and on behalf of the evacuee residents of the Rohwer Relocation Center. We further declare that this declaration of trust is made and executed by us subject to the following specific conditions:

(1) That we will, promptly upon the completion of legal organization of the cooperative association above referred to, convey to the said cooperative association all of our right, title and interest as trustees in and to the business known as Rohwer Enterprises and the stock in trade and accumulated profits thereof, it also being understood that the said cooperative association will at the same time assume all liabilities of the Rohwer Enterprises;

(2) That in the operation of the Rohwer Enterprises under this declaration of trust we will act as trustees only, having no personal interest therein and assuming no personal liability for the obligations



of Kohner Enterprises, and that such obligations shall be payable solely and altogether out of the assets of Kohner Enterprises and of the aforementioned cooperative association which is to succeed to such assets, it is provided to this effect to be expressly included in every contract made by or on behalf of Kohner Enterprises;

(3) Management and control of the business of Kohner Enterprises shall be under the charge of persons approved by the Project Director of the Kohner Relocation Center, and shall be in accordance with rules and principles laid down by the War Relocation Authority;

(4) A constant and thorough audit of cash receipts, expenditures, credit purchases, inventory and all records of the business shall be maintained in such manner as the aforesaid Project Director shall specify;

(5) Adequate property and public liability insurance shall be carried at all times.

IN TESTIMONY WHEREOF we do hereby set our hands on this the \_\_\_\_\_ day of \_\_\_\_\_, 1942.

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(Acknowledgment before Notary)



War Relocation Authority  
Southern Region  
815 Pyramid Building  
Little Rock, Arkansas

Opinion LI-3

October 12, 1942

MEMORANDUM TO: E. B. Whitaker, Regional Director

SUBJECT: Unauthorized movement of evacuees outside  
relocation centers.

In conversation at lunch today we were discussing the problem raised by some of the evacuees going outside the limits of the relocation area to the village of Scher, and possibly elsewhere. The possible danger of violence to the evacuees themselves, entirely apart from the violation of WRA rules involved, makes this a serious problem. We discussed an arrangement whereby the local sheriff's force, or other local police officers, might pick up such truant evacuees and hold them for us in the county jail pending their return to the relocation center. Such a practice would, I am sure, operate strongly to deter the taking of French leave from the areas, especially after it became generally known that the kangaroo courts maintained in local jails made life very unpleasant there for persons of Japanese ancestry.

As to justification for such pick-ups by state officers, I think we are in the clear. It is probably best to put this on the idea that the deserting evacuees are violating WRA disciplinary rules and that the local officers are holding them for us until they can in turn be picked up by the military police or our own internal security officials. This theory serves our purposes adequately and involves no complications, such as necessity for hearing before a U.S. Commissioner or the like.

It is obvious that no state crime is involved in the mere presence of evacuees outside the relocation area. Arrest by local officers on this theory would not be justified unless the evacuees should actually commit some crime.

A federal offense is, however, involved. Public Law No. 503, approved March 21, 1942, makes it a misdemeanor for any person to "enter, remain in, leave, or commit any act in any military area or military zone.....contrary to the restrictions applicable to any such area or zone.....if it appears that (the offender) knew or should have known of the existence and extent of the restrictions



or order and that his act was in violation thereof....." By Public Proclamation No. WD I, promulgated by the Secretary of War on August 13, 1942, the entire areas of both the Jerome relocation project and the Rohwer relocation project were established as military areas. Paragraph 3 of this proclamation requires persons of Japanese ancestry to obtain written authorization before leaving any of said areas. Paragraph 5 subjects persons violating that requirement to penalties provided by Public Law No. 503 quoted above. By Administrative Instruction No. 25, copies of Public Proclamation No. WD I must be posted at and around the exterior boundaries of the Jerome and Rohwer war relocation project areas. This, I understand, has been done. Such posting satisfies the requirements of Public Law No. 503 limiting prosecution to cases in which the offender "knew or should have known of the existence and extent of the restrictions." The sum of this is that an evacuee leaving one of the areas without authorization is guilty of a federal offense and can be prosecuted accordingly in the federal courts.

Arrest by state officers for commission of federal crimes is permissible. Ordinarily this is accomplished after the issuance of a warrant for arrest, but it may be carried through in accordance with the usual mode of process against offenders in such state." See 18 U.S.C. sec. 591. It has been held that a state peace officer may make arrests without a warrant in the case of "any person committing an offense against the laws of the United States in his presence." U.S. v. Dunlop, 23 Fed. (2d) 696, D.C.N.Y. (N.D.) (1926). Apart from this, the state law of Arkansas permits an arrest by a peace officer without a warrant "where a public offense is committed in his presence." Pope's Digest sec. 3726. In view of this it would be altogether permissible for local officers to arrest transient evacuees on the theory that such evacuees were in the course of commission of a federal offense at the time of the arrest. This, of course, would be the case, since the very fact of being absent from the relocation area without a permit would constitute the offense in question. A complicating factor in this theory, however, is the fact that a person arrested on a charge of committing a federal offense is normally entitled to hearing before a U. S. Commissioner, as a matter of right. In cases in which such further proceedings would be undesirable (and this would be the usual case) it would be better not to go on the theory of arrest for commission of a federal offense, though it is entirely conceivable that we may in some cases wish to carry through actual prosecution on this theory. It certainly will be desirable to point out the possibility of such prosecution in discussion with the evacuees themselves.



LA-3, Page 3

The county may wish to collect a small amount for the services rendered us as above indicated. I believe such payments could be made readily, the same as we might pay for lodging or escorting evacuees outside the areas for other purposes. It would seem unnecessary to classify such payments under the head of local governmental services, although there is a provision in our appropriation statute for a limited amount of payment for such local governmental services.

It goes without saying, of course, that more evacuees will be kept inside the areas by moral suasion than by the threat of force. The fact that we deliberately choose not to subject most evacuees to prosecution for the federal offense above referred to will have more effect with them than the fact that we may subject some of them to such prosecution. Furthermore, the suggestion that you made of permitting the evacuees free movement throughout the entire relocation area, as distinguished from movement limited to the centers only, will serve to minimize the problem, by giving the evacuees a fair chance to see the country without violating any rules. I think it is for us, in collaboration with the military police, to decide whether such free movement should be allowed at night as well as in the daytime. It certainly is true that the outer boundaries of the areas should be clearly marked so that the evacuees can always know when they are wandering too far afield.

Signed:

Robert A. Leflar  
Regional Attorney

RALeflar:gm



*Transcribed*

WAR RELOCATION AUTHORITY  
Southern Region  
Pyramid Building  
Little Rock, Arkansas

OPINION LR-4

October 30, 1942

To: Mr. E. B. Whitaker, Regional Director  
Attention: Project Directors and Managers of Community Enterprises  
Subject: Operation of Portrait Studio

The question has been raised as to whether it is permissible, in connection with the community enterprises to be operated at Jerome and Rohwer, to set up a portrait studio. It is stated that many of the evacuees would like to have portraits of their newborn children, of family groups, of wedding parties, and of similar subjects. The demand for such service is particularly pressing due to the fact that cameras are not available to the evacuees generally.

In Circular Letter No. 74, addressed by E.M. Rowalt, Acting Regional Director of the Pacific region, to project directors in that region, it was stated that the Western Defense Command had denied permission for evacuees to operate such studios at relocation and assembly centers within the area of that Command. The conclusion to which the Acting Regional Director was forced was that it would be necessary to contract with a private photographer to provide such service at the projects in the Pacific region.

The problem at the projects located in the Southern region is less difficult. There is no general prohibition against the use or possession of cameras by citizen evacuees or by War Relocation Authority employees in relocation centers in this region, even though such relocation centers be military areas. The contraband rule promulgated for evacuees in the Western Defense Command has no application here. The only relevant rule is the regulation issued by the Justice Department and supplementing the Presidential Proclamation of December 7, 1941, referred to in my memorandum of October 15, 1942, on the subject of Contraband. By this regulation enemy aliens are in all events prohibited from using or possessing cameras, as well as certain other designated articles. The possession of cameras or other contraband articles by citizen evacuees generally is also rendered impracticable by the fact that citizen evacuees and alien evacuees are so closely associated constantly that



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possession of such articles by a citizen evacuee would for all practical purposes render them constantly available to alien evacuees also.

If cameras used in a portrait studio operated by the community enterprises be altogether under the possession and control of staff members or citizen evacuees, with alien evacuees never allowed to work in or about the portrait studio, and with the citizen employees of the studio absolutely responsible for seeing that aliens do not in any event use or possess the cameras, the requirements of the Justice Department regulation would be satisfied. It is therefore the conclusion of this office that, subject to the above conditions, it is permissible to operate a portrait studio as a part of the community enterprises at the relocation centers at Rohwer and Jerome.

A related question has been raised as to the propriety of taking and preserving official documentary pictures showing the growth of relocation centers in their various stages of development. These pictures might possibly be taken by an evacuee citizen photographer. The permissibility of this is controlled by the same principles as those discussed just above. In another memorandum, dated October 15, 1942, this office summarized two opinions of the Solicitor dealing with military censorship of photographs so taken. (Op. Sol. No. 24 and Op. Sol. No. 26.) A copy of that memorandum is attached hereto for your information.

Signed:

Robert A. Ieflar  
Regional Attorney

Attachment



War Relocation Authority  
815 Pyramid Building  
Little Rock, Arkansas

OPINION IR-5

October 30, 1942

To: Mr. Philip M. Glick, Solicitor  
Attention: Regional Director  
Project Directors  
Medical Officers  
Subject: Registration and Certification of Vital  
Statistics in Arkansas

I have your memoranda of October 16 and October 20 in reference to the legal registration of births, deaths and marriages, and the issuance of certificates representing these vital facts. This memorandum is designed to summarize the law in Arkansas and the administrative practice in the Bureau of Vital Statistics of this state in respect to these matters. The memorandum is written so as to furnish a guide to members of the WRA staff dealing with these matters at the relocation centers, as well as to others.

The law governing registration of births and deaths appears in Pope's Digest of the Statutes of Arkansas, sections 6418 to 6431, inclusive. The statutes governing registration of marriages will be referred to later.

1. Registration of Births. Forms are provided for registration of births. One form should be filled out for each birth. It is important that the forms be filled out in full, with the signatures of all persons as indicated in the form.

Separate forms are provided for live births and for still births.

In the case of delayed naming of a child so that the name is not available at the time the original record is made, the registrar will furnish to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed



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and returned to the local registrar as soon as the child shall have been named.

In the case of illegitimate children, the name of the father and the spaces provided for other information concerning him are to be left blank. This is true even though the father be known.

2. Registration of Deaths. A form is provided for registration of deaths. It is important that it be filled in fully and that the signatures of all persons indicated in the blank be secured.

As to burial permits, a special form is provided, but it is proper to rely upon the licensed undertaker in charge of the funeral to see that such forms are properly filled out and duly filed.

3. Marriages. A regular form of marriage license is provided by statute, to be issued by the county clerk. Before it can issue, a bond of \$100 must be entered into by the applicant. (Pope's Digest secs. 9042-43) After the marriage ceremony is performed, a part of the license is to be filled in by the officiating minister or magistrate, he being under a duty then to return the license to the county clerk. The clerk then is under a duty to make a record thereof in his office, then forward a certificate thereof, together with the license, to the married parties. (Pope's Digest sec. 9049) The county clerk is also under a duty to forward to the Bureau of Vital Statistics, each month, a record of all marriage licenses issued. (Pope's Digest secs. 8429-31)

The persons who enter into the marital status may rely upon the county clerk to attend to the details of recordation; that is his duty, and not theirs.

4. Registrars. A system of local registrars of vital statistics in local registration districts is maintained throughout the state. The standard method of recording births and deaths is by filing the above-described reports with the local registrar. The local registrar is under a duty to file with the state office all reports turned in to him for each calendar month on or before the tenth of the following month. It is permissible for a physician, head of a hospital, or other responsible official to turn in to the local registrar all reports for which he is responsible at one time each month. If this is done, the proper time for such filing would be prior to the tenth of the month following that



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covered by the reports.

It is permissible for the physician, hospital head, or other responsible person to send reports directly to the Bureau of Vital Statistics, State Department of Health, Little Rock, Arkansas. In case there is a vacancy in the office of the local registrar, this should be done, and it may be done even though there is a local registrar available. It is preferable, however, to send in the reports through the local registrars.

There is no fee charged for the registration of births or deaths. A fee of 25¢ per item, payable to the local registrar, is paid by the state.

In filling out certificates, either of birth or of death, the following information is necessary:

- A. For the Rohwer Relocation Center:  
Township - Richland  
Registration District Number - 193  
Primary Registration District Number - 5542  
Name and address of local registrar -  
Mrs. Mae Willis, Kelso, Arkansas
- B. For the Jerome Relocation Center, if the birth or death occurs in Chicot county:  
Township - Gaines  
Registration District Number - \_\_\_\_\_  
Primary Registration District Number - 5227  
Name and address of local registrar -  
Mrs. E. N. Roberts, Portland, Arkansas
- C. For the Jerome Relocation Center, if the birth or death occurs in Drew county:  
Township - Bartholomew  
Registration District Number - 201  
Primary Registration District Number - 5555  
Name and address of local registrar -  
Mrs. Mattie B. Green, Baxter, Arkansas
- D. Where the birth report or death report calls for a statement of "usual place of residence" this will normally refer to the home from which the evacuee comes, probably in California, rather than to residence at a relocation center. Legal residence is in general not acquired at a relocation center.



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5. Issuance of Certified Copies. Photostatic copies of birth certificates and death certificates may be procured by ordering same from the Bureau of Vital Statistics, State Department of Health, Little Rock, Arkansas. Such orders must be accompanied by cash or a money order for 50¢ for each certificate desired. The order for a birth certificate should state the name of the child, the place and date of birth, and the names of the mother and father. The Arkansas Bureau of Vital Statistics is almost six months behind in its work at present, and it may be expected that there will be delay in filling orders for such certificates.

6. Forms. Copies of each of the forms above referred to are attached hereto. In addition, a supply of each of the forms is being sent herewith to each of the relocation centers located in Arkansas. In addition, there is sent herewith a copy of a form for securing additional copies of forms.

7. Additional Information. Should any person at the relocation centers require additional information concerning the procedure in connection with matters dealt with herein, it is suggested that a communication be addressed to Mrs. L. G. Beale, Bureau of Vital Statistics, State Department of Health, Little Rock, Arkansas. Mrs. Beale is not the head of the Department, but she is a responsible person. Matters might be facilitated slightly by the use of my name in such communications.

Signed:

Robert A. Leflar  
Regional Attorney

Attachments

RALeflar:gw



Little Rock, Arkansas

Opinion LR-6

November 13, 1942

To: Mr. E. B. Whitaker, Regional Director

Subject: Disposition of Proceeds from Sale of Firewood  
from the Jerome Relocation Center

I have your recent note asking for advice as to what disposition should be made of money to be received from the sale of firewood which may hereafter be cut on the Jerome Relocation Area and sold to the Jerome public schools and other outside public school enterprises.

All proceeds from timber sold by the War Relocation Authority itself should be turned over to Jerome Farms, Inc. As to timber purchased by evacuee owned and operated enterprises at the center and then, after processing, sold by such enterprises, the proceeds thereof may be retained by the evacuee enterprises making the sale.

The problem is governed by the sublease executed between Jerome Farms, Inc., and the War Relocation Authority, dated July 24, 1942. The eighth paragraph of the sublease reads as follows:

"The proceeds from the sale of any timber growing on the premises that accrue to the Authority shall be paid directly to the Lessor, but this provision shall not apply to the proceeds from such sales that may accrue to cooperatives or other associations of the evacuees living on the leased lands and managing such timber lands under sublease or other arrangement with the Authority. The value of any timber used by the Authority in the construction of improvements upon said premises shall not be included in the appraised value of said improvements for the purposes of the preceding paragraph."

The only serious question which might be raised as to the correctness of the conclusions stated above is as



to the so-called "miscellaneous receipts provision" of the federal statutes (Rev. Stat. secs. 3617 and 3618; 31 U. S. C. secs. 484 and 487). The substance of this provision is that all proceeds of sales of government property "shall be deposited and covered into the Treasury as miscellaneous receipts, on account of 'proceeds of Government property', and shall not be withdrawn or applied, except in consequence of a subsequent appropriation made by law."

This statute is not applicable to the sale by the War Relocation Authority of firewood now under discussion, because such firewood does not constitute government property, but is rather the property of Jerome Farms, Inc. By the terms of the sublease between Jerome Farms, Inc., lessor, and the War Relocation Authority, lessee, the lessee is merely allowed to cut and sell wood on behalf of the lessor. The lessor, Jerome Farms, Inc., is the superior owner of the land leased and of the timber thereon, in accordance with the terms of a 99-year lease referred to in the third "WHEREAS" clause of the sublease to the War Relocation Authority. By the terms of this 99-year lease, Jerome Farms, Inc., has the right to cut timber from the land and use the same and the proceeds thereof for its own purposes. The effect of this is that Jerome Farms, Inc., is the owner of the timber. Ownership of this timber is not transferred to the WRA by the sublease executed on July 24, 1942, but rather, by the express terms of paragraph 8 thereof, ownership of such timber is definitely withheld from the WRA. It is true that by paragraph 4 of the sublease the lessee is given the right to "clear, drain, terrace, ditch and otherwise improve the land for cultivation and agricultural use", but this permission to cut timber is expressly limited by paragraph 8, as indicated. The fact that ownership of the timber does not pass to the lessee by the terms of the sublease is shown both by the requirement that proceeds from the sale of timber be paid directly to the lessor, and by the provision that the value of timber used in the construction of improvements on the premises shall not be deemed to increase the value of the land for the purpose of reducing rentals payable to the lessor.

In United States v. Sinnott (Circuit Court, District of Oregon, 1886) 26 F. 84, it was held that a government sale of lumber cut at a sawmill operated by the government, which lumber was made from timber on an Indian-owned reservation, was not a sale of government property, but rather a sale of property owned by the Indians from whose reservation



it was cut, therefore not within the purview of the "miscellaneous receipts provision" of the statutes. The timber had been cut on Indian land under an agreement essentially similar to the sublease permitting such cutting by the WRA in the instant case. An examination of the reports of the Comptroller General of the United States reveals that there have been no decisions by him interpreting the "miscellaneous receipts provision" contrary to the federal court decision. That decision appears to be determinative of the present question. See 12 Comp.Gen. 553 (1933).

A large part of the value of firewood is contributed by the labor involved in cutting it. If the WRA employs evacuees to cut wood, then, on selling the wood, is required to turn over the entire proceeds of sale to Jerome Farms, Inc., it will suffer a net loss of the value of the labor expended. This would obviously make such activity unprofitable.

The eighth paragraph of the sublease itself suggests the way out of this difficulty. The standing timber may be sold to the evacuee owned and operated community enterprises. This sale should, of course, be at a fair price, and the proceeds thereof should be paid to Jerome Farms, Inc. The community enterprises may then in turn cut down and saw the timber into firewood and sell it to the Jerome Public school or other outside purchasers, retaining for themselves the gross sale price. This would be a sale of privately owned property. Presumably the difference between the sale price of the standing timber and the sale price of firewood would pay the cost of labor plus a small profit.

Signed:

Robert A. Leflar  
Regional Attorney



Little Rock, Arkansas

OPINION LR-7

December 4, 1942

To: Mr. E. B. Whitaker, Regional Director  
Subject: Arbitration at Relocation Centers in Arkansas

In Administrative Instruction No. 34, dealing with community evacuee government, it is provided (Part V, paragraph D) that the plan of government shall include a system of arbitration for settlement of civil disputes between residents of relocation centers who voluntarily agree to submit their disputes to arbitration, and in the Community Government Manual issued on October 1, 1942, at pages 17 and 18, some suggestions are made concerning the establishment of such a system for arbitration of private disputes. Any system of arbitration to be set up must comply with the law of the state in which the system operates. For that reason it is desirable to analyze the Arkansas law on arbitration so that organization commissions at the centers in Arkansas can more readily provide for arbitration systems in compliance therewith.

It is not contemplated that arbitration shall altogether supersede litigation in the established courts as a means of settling private disputes at the relocation centers. No one will be required to submit to arbitration against his will; in fact, arbitration awards would be invalid unless made after voluntary agreement by the parties to submit to arbitration. The advantages of arbitration as a means of settling such disputes are, however, so great that it may be assumed that most evacuees will prefer to employ the arbitration procedure. This procedure is well established under the law, not only in Arkansas but in all other American states and in the common-law world. Arbitration proceedings are relatively inexpensive. They are less formal than court proceedings, they eliminate the necessity of appearance in court by parties and witnesses and frequently they avoid that ill feeling between parties which too frequently characterizes cases in court.



In Arkansas two procedures for arbitration may validly be employed. One exists under the common law; the other exists under statutes. Each of the two procedures will be summarized.

Common-Law Arbitration. At one time, common-law courts were opposed to arbitration as a means of settling private disputes because it had the effect of ousting such courts of their jurisdiction. The increase of judicial business has long since changed this attitude. Today courts are glad to have disputes privately settled and are glad to put the judicial seal of approval upon such private settlements. For practical purposes that is what happens under the system of common-law arbitration. See 3 Am. Jur. 832 et seq.; 6 O. J. 3, 152 et seq.

As a preliminary to common-law arbitration there must be an agreement between the disputant parties to arbitrate their dispute and to be bound by the award of the arbiters. But this agreement need not be in writing. It may be inferred from the conduct of the parties. Couch v. Harrison, 68 Ark. 580, 60 S.W. 957. It is best, however, for the agreement to be in writing. The award by the arbiters should in all events be in writing, and must be so definite and final in its terms that it cannot be misunderstood. Lee v. Castott, 1 Ark. 206; Mannuel v. Campbell, 3 Ark. 324. Practically any civil dispute, apart from such matters as divorce and probate, may be arbitrated. Criminal matters may not be arbitrated.

When the written award of the arbiters is rendered, it is binding upon the parties in the same manner as a contract would be; in fact, it is their contract. They have agreed to substitute such rights as are specified in the arbitration award for their previously existent legal rights. The award is not self-executing, however. If the parties recognize its binding nature and voluntarily comply with it, that is, of course, an end of the matter. But if either of the parties refuses to comply with it, judicial action is necessary, suit must be brought in the regular courts on the arbitration award. In such suit no evidence will be heard on the original subject of dispute. The only question is as to the terms of the arbitration agreement and the award thereunder. If these be valid, judgment will be entered upon the award and that judgment is enforceable, by execution or otherwise, in the same manner as would be a judgment entered upon the original cause of action. See



Soudan Planting Company v. Stevenson, 94 Ark. 599, 128 S.W. 574; Ferguson v. Rogers, 129 Ark. 197, 195 S. W. 22. The only grounds for attack on the award would be that it went outside the scope of the agreement or that it was based upon fraud, duress or material mistake. Wastell v. Salo, 140 Ark. 408; 215 S. W. 583.

Statutory Arbitration. The Civil Code of Arkansas sets up a procedure for arbitration which obviates the necessity for filing suit to enforce arbitration awards. This is done by entering the award itself of record and making it a judgment of the court. This procedure is somewhat more complex than that involved in the simple process of common-law arbitration. For one thing, the agreement to arbitrate must be in writing, and this writing must be filed and noted on the records of the court and followed by a rule of the court, signed by the judge, directing that the matter described in the agreement be arbitrated, and setting out the time within which the award is to be made and returned. (Pope's Digest, secs. 451-55.) While it is true that under the statute the rule of court ordering an arbitration is unnecessary when the court is in vacation (Id., sec. 453), it is desirable always to secure the rule of court. The arbitrators and the umpire, if there be one, must, before they proceed to act in the case, take a specified oath. (Id., sec. 456.) When acting as arbitrators they have the power to issue subpoenas for witnesses and to examine the parties and witnesses under oath. (Id., secs. 456-57.) Witnesses failing to attend or refusing to testify may be punished as for contempt by the court ordering the arbitration. (Id., sec. 458.) The award of the arbitrators must be in writing, it must be clear and specific, it must state the time when it was made, and must be signed by the arbitrators. Copies of it must be delivered to each of the contending parties and the original copy returned to the court with a notation on the original showing the date of delivery of copies to each party. (Id., sec. 461.) At the next term of court, not less than ten days after the delivery and filing of copies of the award, the award shall be entered of record and made the judgment of the court, unless at that time it is attacked by the losing party. (Id., sec. 462.) If the losing party wishes to attack the award, he must do so promptly. Permissible grounds for attack are substantially the same as those for attack on an award in a common-law arbitration, that is, for disregard of the agreement of the parties and for fraud, duress or material mistake, with the added ground



of non-compliance with the arbitration statute. Kirten v. Spears, 44 Ark. 156; Niagara Fire Insurance Company v. Boon, 76 Ark. 153, 88 S. W. 915.

Necessity for Choice of Procedure. The enactment of the arbitration statute did not do away with common-law arbitration in Arkansas. Common-law arbitration is still completely valid and permissible. Wilkes v. Cetter, 28 Ark. 519; Harris v. Hanie, 37 Ark. 343. It is not possible, however, to treat a defective statutory arbitration as valid under the common law even though apart from the statute it would have been valid under the common law. If arbitration is initiated in purported compliance with the statutory form, it must be carried through in accordance with the statute, else it fails altogether. Franks v. Battles, 147 Ark. 169, 227 S. W. 33. Parties wishing to arbitrate their disputes must choose one procedure or the other in advance and follow it through consistently.

Justice of the Peace and Common Pleas Cases. The statutory procedure heretofore discussed contemplates rules and judgments in circuit and chancery courts. The statute further provides, however, that matters within the jurisdiction of a justice of the peace court may be submitted to arbitration by an order, rule or agreement entered on the records of that court in the same manner as in the other courts and with the same subsequent proceedings, with the difference, however, that after the award becomes a judgment of the justice of the peace court, appeal may be taken to the circuit court de novo, as in other cases appealed from justice of the peace courts.

The jurisdiction of justice of the peace courts is governed by the Arkansas Constitution, Article VII, sec. 40, which provides:

"They shall have original jurisdiction in the following matters: First, exclusive of the circuit court, in all matters of contract where the amount in controversy does not exceed the sum of one hundred dollars, excluding interest, and concurrent jurisdiction in matters of contract where the amount in controversy does not exceed the sum of three hundred dollars, exclusive of interest (a); second, concurrent jurisdiction in suits for the recovery of personal property where the value of the property



does not exceed the sum of three hundred dollars, and in all matters of damage to personal property where the amount in controversy does not exceed the sum of one hundred dollars..."

The statute makes no specific reference to arbitration of causes within the jurisdiction of courts of common pleas. Such courts exist only in a small minority of the counties of Arkansas, but they do exist in Desha and Drew counties. The Rohwer relocation center is in Desha county, and a part of the Jerome relocation center is in Drew county. Though the statute is silent, it is probable that courts of common pleas have the same power to enter rules of court ordering arbitration, and to enter arbitration awards as judgments, as do circuit and chancery courts under the statute. Since the jurisdiction of courts of common pleas, however, is altogether concurrent with that of justice of the peace courts in lesser cases, and circuit courts in cases of slightly greater importance, it is possible, though not necessary, to disregard them in summarizing judicial jurisdiction over statutory arbitration.

Conclusions. It is suggested that the forms and procedures for use in arbitration at the relocation centers in Arkansas be so devised that the parties may exercise an option as to which form of arbitration they will employ. In any case in which it appears that the good faith of the parties and their non-litigious character will induce them to abide by the award of the arbiters without levy of execution or use of judicial process, it is recommended that they use the simpler common-law procedure. This will also be generally desirable where only small sums, such as give rise to exclusive jurisdiction in justice of the peace courts, are involved. (It will be remembered that good faith and voluntary payment by the losing party need not be relied upon completely, since judicial action on the common-law arbitration award remains possible.) On the other hand, if a large sum is involved, and especially if the parties are disputatious and inclined to fight their case to the last ditch, it would be better to use the statutory form for arbitration.

Forms for agreements, awards, oaths and court orders suitable for each type of arbitration are attached hereto.

The provisions for arbitration to be included by the Organization Commission in the plan for community government at each center can be formulated so as to follow the above



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suggestions. Furthermore, it would be desirable for the Organization Commission to systematize the procedure for arbitration by providing for the maintenance of a list of available arbiters at all times, a regular docket for cases submitted to the arbiters, with appropriate records thereof, a regular method and form for giving notice of the time and place for hearings, etc. It will not be necessary for the rules thus drawn up to include the forms for agreements, oaths, awards, court orders, etc., attached hereto, but a reference to the preparation of such forms would be desirable.

Signed:

Robert A. Leflar

Attachments

RAleflar:gw



Little Rock, Arkansas

Opinion LR-8

December 9, 1942

MEMORANDUM TO: Mr. E. B. Whitaker, Regional Director

SUBJECT: Arkansas divorces for evacuees living in relocation centers.

A question has been raised several times as to whether it would be possible for evacuees living at the Rohwer and Jerome relocation centers to secure divorces in Arkansas. No cases requiring immediate attention have been brought forward, but the problem has been somewhat urgent at centers in some other states and it seems well to clarify it before it becomes acute.

Under generally recognized legal principles, jurisdiction to grant divorces depends upon the domicile of the husband and wife involved. The only state having jurisdiction to grant a divorce is the state in which one or both of the parties have their legal domicile. Divorces granted elsewhere are said to be granted without jurisdiction, and therefore to be void. American Law Institute, Restatement, Conflict of Laws, secs. 110-113.

The concept of domicile thus used as a test of jurisdiction to grant divorces is a technical one. No person has more than one domicile. A person's domicile is assigned to him by law, on the basis of his own conduct or the conduct of parents, husband, or guardian. A.L.I., Rest., Conflict of Laws, secs. 11 et seq. Though the word "domicile" is not exactly synonymous with "legal residence", it has approximately the same meaning, and for purposes of the topic now under discussion, the term may be taken as meaning legal residence. Since it is established that evacuees do not acquire legal residence at the relocation centers to which they have been removed (Op. Sol. No. 20), it follows necessarily that they likewise do not acquire new domiciles at these centers. Their domiciles remain at the places at which they were domiciled prior to evacuation. In the case of nearly all of the evacuees located at Rohwer and Jerome, this means that they are still domiciled in California.



Were it not for the so-called "Arkansas quick divorce law", there would be no doubt about the matter. Divorces could not be secured in Arkansas. The quick divorce law (Pope's Digest, sec. 4386) appears, however, to permit the granting of such divorces in this state. That law, enacted in 1931, is as follows:

The plaintiff, to obtain a divorce, must prove, but need not allege, in addition to a legal cause of divorce:

First. A residence in the State for three months next before the final judgment granting a divorce in the action and a residence for two months next before the commencement of the action.

Second. That the cause of divorce occurred or existed in this State, or if out of the State, that it was a legal cause of divorce in this State, the laws of this State to govern exclusively and independently of the laws of any other state to the cause of divorce.

Third. That the cause of divorce occurred or existed within five years next before the commencement of the suit.

Two provisions of this statute should be noted particularly. These are:

1. Residence in Arkansas need be maintained for only two months before filing suit and for one additional month before a decree is rendered.

2. Grounds for divorce are to be governed exclusively by the laws of Arkansas, regardless of where grounds arose.

Immediately after enactment of the quick divorce law quoted above, it was argued that the term "residence in the State for three months" referred to domicile in the technical sense, and not to mere physical presence in the state. In the case of Squire v. Squire (1932) 186 Ark. 511, 54 S.W.(2d)281, this argument was rejected. The court said that the statute "does not provide that the plaintiff must, at the time of becoming a resident of this state or at the time of trial,



have a 'permanent intention \* \* \* of making Arkansas her permanent home.' All that is required in this respect is that proof must be made of a residence in this state of two months before suit is brought and of three months before final judgment. The statute makes no mention of a permanent intention of making Arkansas a permanent home.....Even though she moved to this state to bring a divorce suit and had the intention of leaving after the divorce was granted, this would not deprive the court of jurisdiction, if she were actually and in good faith a bona fide resident for the period prescribed by the statute."

Under the test of residence thus laid down, it appears that evacuees living at the relocation centers in Arkansas do satisfy the requirements of the divorce jurisdiction statute. It is true that recent cases have insisted that the residence in Arkansas must not be colorable merely but must be bona fide. Carlson v. Carlson, (1939) 190 Ark. 231, 126 S.W.(2d) 242; Barth v. Barth, (Ark., 1942) 161 S.W.(2d) 395 (must be bona fide resident for 90 days, not merely colorable, with absence most of period); Gilmore v. Gilmore (Ark., 1942) 164 S.W.(2d) 446 (accord). The continuous and genuine nature of the physical presence of the evacuees cannot, however, be doubted. Unless the court chooses to set up some further requirement by way of interpretation of the statute, it will probably be held that evacuee divorces can be secured here. 1/

A further question arises as to the effect which will be given these divorces in other states. No state is required to recognize a divorce "granted without jurisdiction" in the sense described in the second paragraph of this opinion. Thus it was held in Miller v. Miller, (1955) 173 Miss. 44, 159 So.112, that a quick divorce granted in Arkansas to a non-domiciliary who had been physically present here for the 90-day period was an absolute nullity and entitled to no recognition whatever. The parties to the Arkansas divorce were deemed to be still married to each other in Mississippi. Other states, including

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1/ attention should also be called to the requirement in Pope's Digest, sec. 4397, that the attorney filing suit for divorce for any non-Caucasian must show upon the complaint the race of the parties to such suit.



California, would probably take the same attitude. A statement of the law on this point appears in Op. Reg. Atty. S.F. No. 34, where the Tule Lake divorce problem is discussed. For citation of the California authorities, reference is made to that Opinion.

While it is true that on principles of estoppel even a void divorce may be effective for limited purposes as against parties who have voluntarily taken part in the divorce proceeding or who have taken advantage of the divorce decree, this result will give little aid to the divorced parties themselves, but will rather operate against their interests in the few cases to which the principle applies. The estoppel cases are also discussed in Op. Reg. Atty. S.F. No. 34.

The entire problem of divorces granted under the Arkansas law and extrastate recognition thereof, including cases based on estoppel, is discussed in Leflar, ARKANSAS LAW OF CONFLICT OF LAWS, (1936), secs. 132-140.

The general conclusion may be stated that evacuees, like other visitors from other states, should be warned that Arkansas divorces may not stand up in court and that they should be secured only as a kind of last resort, in the absence of opportunity for domestic relief in the state of their true domiciles.

Signed:

Robert A. Leflar

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