WAR RELOCATION AUTHORITY
Office of the Solicitor
Washington

September 8, 1944

OPINION NO. 82

To: The Director

Subject: Analysis of Alien Land Law of Oregon as it Affects Persons of Japanese Ancestry.

This is the third of a series of three memoranda summarizing the Alien Land Laws of the three West Coast States and discussing some problems raised by the enforcement of these laws. This memorandum summarizes and discusses the Oregon Alien Land Law.

The Oregon Alien Land Law was enacted in 1923 (1939 Oregon Compiled Laws Annotated, vol. 5, secs. 61-101 to 61-112, inclusive). The law has not been amended or otherwise changed since its enactment. It is in almost precisely the same language as the California Initiative Act of 1920, as amended in 1923 (see Op. Sol. No. 80). Most of the discussion in my memorandum, dated August 5, 1944 (Op. Sol. No. 80), on the character of Alien Land Law prohibitions is applicable to the Oregon law.

Summary of the Oregon Alien Land Law

The Oregon Alien Land Law is here summarized by sections.

Section 61-101. Aliens eligible for citizenship are given the same rights with respect to the ownership of real property as citizens of the United States.

Section 61-102. All aliens other than those mentioned in Section 61-101 (i.e., aliens ineligible for citizenship) are given the right to acquire, possess, enjoy and transfer real property or any interest therein only to the extent allowed by any treaty existing between the Government of the United States and the country of which such alien is a subject.

The section uses the term "any treaty now existing" with respect to the acquisition and possession of real property in precisely the same manner as Section 2 of the 1920 California Initiative Act (see Op. Sol. No. 80). This language apparently incorporates into the statute the Treaty of 1911 between the United States and Japan, defining the property rights of Japanese nationals in this country (37 Stat. 1504). Under this treaty Japanese nationals in this country were authorized "to own or lease and occupy houses,

manufactories, warehouses and shops" and "to lease land for residential and commercial purposes". The treaty was terminated, effective January 26, 1940 (see Op. Sol. No. 80). However, since the statute apparently incorporates the treaty by reference, the prohibitions in the statute are probably still limited by the treaty, even though it has been terminated.

Section 61-103. Any company, association or corporation of which a majority of issued capital stock is owned by ineligible aliens or of which a majority of the members are ineligible aliens may acquire, possess and transfer real property and any interest therein only to the extent and for the purposes prescribed by "any treaty now existing between the government of the United States and the nation or country of which such members or stock holders are citizens or subjects, and not otherwise". Ineligible aliens are also permitted to become members of and to acquire stock in companies, corporations or associations authorized to acquire, possess and transfer "agricultural lands" to the extent permitted by treaties "now existing", and not otherwise. The prohibition against the acquisition of interests in corporations authorized to acquire agricultural lands is less restrictive than the corresponding section of the California law which prohibits the acquisition of interests in corporations authorized to acquire any kind of real property or interest therein (see Op. Sol. No. 80).

Section 61-104. Ineligible aliens and ineligible corporations are prohibited from being appointed guardians of that part of the estate of minors which consists of property which such aliens or corporations are inhibited from acquiring, possessing, enjoying or transferring by the Act. As discussed below, the validity of this section is not entirely clear.

Section 61-105. This section defines the term "trustee" to include any guardian, trustee, attorney in fact, or agent or any other person who has title to or custody of or control of any property belonging to an alien or the minor child of an alien, if such alien is inhibited from acquiring, possessing, and transferring such property. All "trustees" are required to file annual reports, on or before the 31st day of December of each year, showing:

1. The property, real or personal, held by the trustee for an alien or minor.

2. Date on which each item of property came into his control or possession.

3. All expenditures, investments, rents, issues and profits in respect to the administration and control of such property, with particular reference to the holdings of corporate stock and leases, cropping contracts and other agreements in respect to land, and the handling or sale of the products thereof.

Any person violating the section is declared to be guilty of a misdemeanor and subject to punishment by fine not exceeding $1000 or by imprisonment in the county jail not exceeding one year, or both.

Section 61-106. This section requires probate courts to order real property and interests therein and shares of stock which cannot be held by ineligible aliens to be sold, whenever an ineligible alien becomes entitled to them by inheritance or devise. The proceeds are distributed to the alien.

Section 61-107. This section is not relevant with respect to alien land ownership. It prescribes the conditions under which non-resident aliens may inherit personal property in the State.

Section 61-108. This section prescribes the escheat procedure which shall be followed in vesting title to real property or interests therein illegally held under the Act. The district attorney of the county in which the property is situated has responsibility for enforcing the law. The attorney general does not share this responsibility, as the attorney general does in California (see Op. Sol. No. 80).

Section 61-109. This section provides for the escheat of leasehold and other interests less than a fee illegally held by ineligible aliens. The court is required to determine the value of the leasehold or other interest less than the fee, and to order the whole property sold. The costs of the action are paid and the remainder is distributed by the court in accordance with the interests of the parties therein. The section does not specifically mention cropping contracts. However, cropping contracts are included in the prohibitions by the language "any leasehold or other interest in real property less than the fee". See Webb v. O'Brien, 263 U. S. 313 (1923).

Section 61-110. Every conveyance made with intent to prevent, evade or avoid escheat is declared to be void as to the State, and the interest conveyed or sought to be conveyed is subject to escheat to the State, if the property conveyed may not be held by an alien. A prima facie presumption that the conveyance was made with such intent arises upon proof of any of the following:

1. The taking of the property in the name of a person eligible to own the property, if the consideration is paid or agreed or understood to be paid by an ineligible alien.

2. The taking of the property in the name of a corporation or company, if the memberships or shares held by ineligible aliens, together with the memberships or shares held by eligible persons but paid or agreed or understood to be

paid for by ineligible aliens, would amount to a majority of the memberships or a majority of the issued capital stock of such corporation or company.

3. The execution of a mortgage in favor of an ineligible alien, if the alien is given possession, control or management of the property.

The enumeration of these presumptions does not preclude other presumptions or inferences that reasonably may be made as to the intent to prevent, evade, or avoid escheat.

Section 61-111. A conspiracy to effect a transfer of real property or an interest therein in violation of the provisions of the law is punishable by imprisonment in the county jail or state penitentiary for not exceeding two years or by a fine not exceeding $5000, or both.

Section 61-112. This section, as printed in the 1939 Compiled Laws, along with the provisions of the Alien Land Law, is as follows:

"The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected, by reason of the alienage of any person from or through whom such title may have been derived."

This provision was enacted in 1854. The 1939 Oregon Compiled Laws apparently do not purport to be a re-enactment of the Oregon statutes. The statute authorizing the 1939 Compiled Laws does not indicate that the compilation was intended to re-enact the statutes but that it was intended merely to provide a systematic arrangement of the statutes of the State. (Oregon Laws, 1939, ch. 460, p. 907.) Usually, a compilation of the statutes of a State does not affect the status of the law, and the final authority remains in the statutes as originally enacted. See J. G. Sutherland, Statutes and Statutory Construction, Third Edition, 1943, vol. 2, sec. 3704. The inclusion of Section 61-112 in the Alien Land Law by compilation probably does not have the effect of a re-enactment. It is, therefore, doubtful that the section is effective with respect to all titles which passed through the hands of an alien before 1939, simply because it was included in the 1939 compilation.

Discussion of Oregon Alien Land Law

1. The Oregon reports are singularly free of decisions concerning the Alien Land Law of the State. Only one case has been decided by the Supreme Court interpreting the law. In the case of Yoshida v. Security Insurance Company of New Haven, Connecticut, 145 Ore. 325, 26 P.(2d) 1082

(1933), the Oregon Supreme Court held that Japanese tenants engaged in the hog feeding business were conducting a "commercial" rather than an agricultural operation within the meaning of the Treaty of 1911 between the United States and Japan. The court held that a month-to-month tenancy covering the land used in the hog feeding operations was valid under the Alien Land Law, since the treaty with Japan permitted Japanese subjects to lease land for residential and commercial purposes.

2. Although many questions which may arise under the Oregon Alien Land Law have not been decided by the Oregon courts, the decisions of the California courts are particularly important with respect to the Oregon law. As pointed out above, the Oregon Alien Land Law was apparently copied from the California Initiative Act of 1920, as amended in 1923, with some minor changes. When the legislature of a State has used a statute of another State as a guide for the preparation and enactment of a statute, the courts of the adopting State will usually follow the construction placed on the statute in the jurisdiction of its inception. They usually refuse to follow the foreign court's construction of the statute only when they feel the construction given the statute is against the weight of authority, is not based on sound reasoning or is contrary to the settled policy of the laws of the adopting state. The reason given for this rule is that in adopting the statute the legislature is presumed to have adopted the construction which had been put on the statute by the courts of the State of its origin (J. G. Sutherland, Statutes and Statutory Construction, Third Edition, 1943, vol. 2, sec. 5209, p.551). The construction placed on the California statute by the courts will probably be followed by the Oregon courts in most instances.

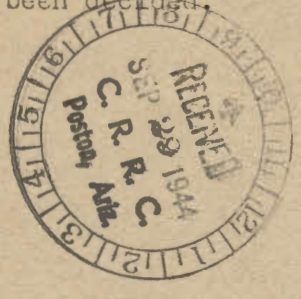
3. Since the California law has been held constitutional (see cases cited in Op. Sol. No. 80), the Oregon law probably will also be held constitutional. There are no changes in the Oregon statute from the California statute which would affect its constitutionality.

4. As pointed out above, the Oregon legislature did not include in the Oregon law the provisions in the 1923 amendment to Section 7 of the 1920 California Initiative Act for the "automatic" escheat of property illegally held by an alien as of the date of wrongful acquisition. The Oregon statute follows substantially the provisions of Section 5 of the 1913 California Act which prohibits the acquisition of real property interests by ineligible aliens and declares that such conveyances shall be void as to the State and shall be subject to escheat to the State. The decisions in California respecting the validity of titles to land, prior to the adoption of the 1923 amendment (cited in Op. Sol. No. 80), will probably be followed by the Oregon courts. This means that titles to land which have passed through ineligible aliens are not vitiated

simply because they have once been held by aliens, and that an alien may convey good title prior to the institution of an escheat proceeding by the State. The decisions that aliens may convey good title to land any time before the institution of escheat proceedings are in accordance with the rules of common law and the weight of authority. (See cases cited in Op. Sol. No. 81.) Title insurance companies should be willing to insure titles to land even though they have passed through the hands of ineligible aliens.

5. Section 61-104 of the Oregon law provides that ineligible aliens and ineligible corporations may not be appointed guardians of that part of the estate of minors which consists of property which such aliens or corporations are prohibited from acquiring, possessing, enjoying or transferring. Similar provisions appear in the California and Washington laws. The California Supreme Court held unconstitutional the provision in the California law, in so far as it prohibited ineligible aliens from being appointed guardians of the estates of their minor children. The Court decided that the prohibition denied aliens and their minor children rights guaranteed to them by the Fourteenth Amendment to the United States Constitution. Tetsubumi Yano's Estate, 188 Cal. 645, 206 Pac. 995 (1922). The Washington Supreme Court, however, took a precisely opposite view and held constitutional a provision in the Washington law forbidding aliens to serve as guardians of the estates of their minor children, where the estates consisted of real property. The Washington Court stated that the California court was wrong in its view of the problem. In re Fujimoto, 130 Wash. 188, 226 Pac. 505 (1924).

It is impossible to say with any degree of certainty how the Oregon Supreme Court would decide the question of the validity of the provision prohibiting aliens from serving as guardians of the estates of their minor children. The Yano decision was made prior to the enactment of the Oregon law. Nevertheless, the Oregon legislature included in the Oregon law the language which had been declared unconstitutional by the California Supreme Court. We have found no decisions in other States in which the question has been decided.



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