

ELECTIONS:
ALIENS:
DISQUALIFIED FROM
VOTING: WHEN:

Filing of petition for naturalization as United States citizen by alien, who has not been finally awarded citizenship, said alien is not citizen of U.S. within the meaning of Article VIII, Section 2, Constitution of Mo., as amended, and is not entitled to vote at any elections by people of Missouri.

March 23, 1960



Honorable Larry M. Woods
Prosecuting Attorney
Boone County
Columbia, Missouri

Dear Mr. Woods:

This is to acknowledge receipt of your recent request for a legal opinion which reads as follows:

"Is a person who is an alien and who has taken out papers for American citizenship but not yet become a citizen qualified to vote in school, county and state elections?"

"I refer you to Article 8, Section 2 of the Constitution, as amended in November, 1958. You will note that the phrase, 'and no other person' was left out of the new amendment. This seems to raise some question as to whether a person who is not a citizen may now vote."

We construe your inquiry to ask if an alien who has filed a petition for naturalization as an American citizen, but who has not yet become a citizen, is qualified to vote in school, county and state elections.

Reference is made in your letter to Article VIII, Section 2, Constitution of Missouri, 1945, as amended in November, 1958. You comment on the fact that the words "and no other person" in the constitutional provision have been left out of the amendment and this omission seems to raise some question as to whether a person who is not a citizen may now vote.

Article VIII, Section 2, Constitution of Missouri, 1945, read as follows:

"All citizens of the United States, including

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occupants of soldiers' and sailors' homes, over the age of twenty-one who have resided in this state one year, and in the county, city or town sixty days next preceding the election at which they offer to vote, and no other person, shall be entitled to vote at all elections by the people; provided, no idiot, no insane person and no person while kept in any poor house at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting."(Underscoring ours.)

An amendment to Article VIII, Section 2, supra, was adopted on November 4, 1958, and reads as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, over the age of twenty-one who have resided in this state one year, and in the county, city or town sixty days next preceding the election at which they offer to vote, are entitled to vote at all elections by the people. Citizens of the United States who are otherwise qualified to vote under this section and who have resided in this state sixty days or more, but less than one year, prior to the date of a presidential election may be permitted by law to vote for presidential and vice presidential electors at such election but for no other officers. No idiot, no person who has a guardian of his or her estate or person and no person while kept in any poorhouse at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting. All persons voting for the presidential and vice presidential electors under the sixty day resident provision shall sign an affidavit as to their eligibility to vote under said section, and any person who falsifies said affidavit shall, upon conviction, be deemed guilty of a felony. Amendment adopted November 4, 1958."

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The qualifications of voters in Article VIII, Section 2, supra, and the amendment are the same in some respects. Both provide that all citizens of the United States, including occupants of Soldiers' and Sailors' Homes, over the age of 21, who have resided in this state one year, and in the county, city or town sixty days next preceding the election at which they offer to vote, as prerequisites for voting at all elections by the people. However, at this point the sameness of the qualifications end. It was here that the original Constitutional provision continued with the words of limitation "and no other person" which phrase has been left out of the amendment.

From the language used in the original constitutional provision, particularly the words "and no other person" it clearly appears to be the intention of the framers of the Constitution that the right to vote at all elections by the people of Missouri should be limited to those citizens of the United States who possess the qualifications therein mentioned and to exclude all other persons.

Apparently, the above mentioned words were intentionally left out of the amendment for the reason the framers of the Constitution did not intend to limit the right of suffrage to those American citizens who possessed all of the qualifications mentioned in the first part of the amendment. Such words would not only have been unnecessary and improper, but would have been in conflict with the second sentence of the amendment, as will presently be noted.

While the first sentence grants the unrestricted right of suffrage to all citizens who possess all the qualifications therein mentioned, the second sentence grants a limited voting privilege to those citizens who cannot meet every requirement under the first sentence.

Under the provisions of the second sentence citizens of the United States possessing all of the qualifications mentioned in the first sentence except residence, and who have resided in the state sixty days or more, but less than a year, preceding the date of a presidential election may by law, be permitted to vote for presidential and vice presidential electors but for no other officials.

Such limited voting privileges authorized by the constitutional amendment have been implemented by Section 1, Senate Bill No. 38, 70th General Assembly, and reads as follows:

"Any citizen of the United States who is otherwise qualified to vote under the constitution of this state and who has resided in this state sixty days or more but less than one year prior to the date of a presidential election may vote for

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presidential and vice-presidential electors at such election but for no other officers. Laws 1959, p. ___ S.B. No. 38, §1."

From the amendment it is noted that only citizens of the United States who meet all of the qualifications imposed by the first sentence are entitled to vote at all elections by the people in the state. It is also noted that if citizens of the United States possessing all of the first mentioned qualifications except the necessary residential requirements may, if they possess the residential qualifications imposed by the second sentence vote for president and vice president.

This brings up the question as to whether or not an alien who has filed a petition for naturalization in the proper court but has not been declared a citizen of the United States is a citizen and qualified voter within the meaning of the above quoted constitutional amendment.

Part 2, Chapter 12, Title 8, U.S.C.A., entitled "Nationalization Through Naturalization" contains the applicable statutes and the prescribed procedure to be followed by one seeking to become a citizen of this country.

In the case of United States v. Lehmann, 136 Fed. Supp., 322, in discussing the naturalization statute at l.c. 327, the court said:

"[5,6] The Naturalization Act of 1906 was designed to prevent the frauds and to correct the abuses that had so frequently occurred in connection with the naturalization of aliens under prior laws. As shown by the cited cases, the statute which specified the manner--' and not otherwise'-- in which admission to citizenship may be obtained, must be followed in precise and strict conformity to the Congressional mandate. It has been rightly said that title to citizenship is the 'most precious gift' within the power of the United States to award to friendly aliens, and Congress has decreed that it shall be awarded only to those who possess all the requisite qualifications and who, in presenting their petitions, exercise the utmost good faith and comply strictly with all the prescribed requirements constituting the manner in which citizenship may be obtained."

Again, in the case of In re Lee Wee's Petition, 143 Fed. Supp., 736, in discussing the naturalization statutes as applicable to the

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facts involved, and the reason given for denying the alien petitioner's petition at l.c. 738, the court said:

"[4] The statutes give an alien the right to submit his petition and evidence to a court, and to have that tribunal judicially pass upon his application in the exercise of judicial judgment and not in the act of conferring or withholding a favor by the court. But the person is entitled to receive such judgment only if requisite facts prescribed by the Acts of Congress are established. In re Tutun, supra. The statutory procedural process required on an application for citizenship has been fully complied with in this case, and the petitioner has no substantive right to become a citizen of the United States contrary to the Act of Congress.

"The petition for naturalization of Lee Wee will be denied on the ground that petitioner has failed to establish good moral character during the period required by law in that he has in fact been convicted of more than two gambling offenses during the requisite five year period."

From the above mentioned cases it is apparent the Federal statutory procedure must be strictly complied with by the alien petitioner before citizenship can be awarded to such petitioner.

While it is true the procedure is begun when an alien files his petition for naturalization in the proper court, although this is only one of many steps which must be taken, and in itself is insufficient to make him a citizen, he was not a citizen before filing the petition and neither can he become one after the petition has been filed when no further steps of the procedure are taken. It is only after every step of the statutory procedure has been taken and the court is sufficiently satisfied of such compliance and a final judgment is rendered awarding citizenship, that the alien legally becomes a citizen of the United States.

Therefore, in answer to the inquiry of the opinion request, it is our thought that an alien who has filed a petition for naturalization and who has not been awarded citizenship by the final judgment of the court in which the proceedings are pending, is not a citizen of the United States within the meaning of Article VIII, Section 2,

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Constitution of Missouri, 1945, as amended, and is disqualified from voting at all elections by the people of Missouri.

CONCLUSION

Therefore, it is the opinion of this office that the filing of a petition for naturalization as a citizen of the United States by an alien, who has not finally been awarded citizenship in accordance with the applicable Federal statutory procedure is not a citizen of the United States within the meaning of Article VIII, Section 2 Constitution of Missouri. Lacking the constitutional qualifications of United States citizenship, such alien is not entitled to vote in any elections by the people of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

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