

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL - 1952

131. Citizenship--Person Born Outside of Jurisdiction of United States, Whose Father was a United States Citizen, is a United States Citizen.

CARSON CITY, January 4, 1952.

HON. CHARLES H. RUSSELL, Governor of Nevada, Carson City, Nevada.

DEAR GOVERNOR RUSSELL: This will acknowledge receipt of your letter dated January 2, 1952, requesting the opinion of this office as to the citizenship of Frances H. Taylor, of Henderson, Nevada, in the matter of her application for commission as a Notary Public.

STATEMENT

Frances H. Taylor of Henderson, Nevada, made application for commission as Notary Public. To the question in the application as to citizenship, Mrs. Taylor claimed citizenship derived from her father's naturalization in 1894. Mrs. Taylor supplied documents and information to the effect that her father was naturalized in 1894; that she was born in Canada in 1915; that she came to this country before attaining majority, and has since then held various positions of responsibility in the United States. The question is whether under such facts Mrs. Taylor is a United States citizen and consequently eligible insofar as the requirement of citizenship is concerned to be commissioned a Notary Public.

OPINION

Section 1993 of the Revised Statutes (U. S. Code, Title 8, sec. 6), which was derived from the Act of February 10, 1855 (10 Stats. 604), reads as follows: "All children born out of the limits and jurisdiction of the United States, whose fathers may be at the time of their birth citizens of the United States, are declared to be citizens of the United States; but the right of citizenship shall not descend to children whose fathers never resided in the United States."

The foregoing was the law of the United States continuously from February 10, 1855, until May 24, 1934. A child born outside the limits of the United States whose father at the time of the child's birth was a citizen of the United States was an American citizen by birth. The only limitation being that the father must have at some time resided in the United States.

In 1934 the above law was amended by adding certain requirements. However, the 1934 amendment proceeds at the outset with the wording, "Any child *hereafter* born out of the limits and jurisdiction of the United States \* \* \*." The requirements of this amendment are applicable then only to children born after 1934, and in no way affects the status of Mrs. Taylor.

The Nationality Act of 1940 (54 Stats. 1172) repeals the prior law on the subject. However, a saving clause is found in section 504, Title I, Subchapter V, wherein it is provided that the repeal shall not terminate nationality heretofore lawfully acquired. The Act of 1940 does not, therefore, after the status of Mrs. Taylor.

If there be any matter of dual citizenship in Mrs. Taylor, there is little doubt, at least from facts presented to us, that she has elected to make her citizenship that of the United States.

From the facts presented to us and in the event there has been no act expatriation on the part of Mrs. Taylor, or on the part of her father prior to her birth, this office is of the opinion that she is a citizen of the United States by birth. Ex parte Gilroy, 1919, 257 F. 110; Doyle Town of Diana, 203 N.Y. App. Div. 239.

Respectfully submitted,

W. T. MATHEWS, Attorney General.

By WM. N. DUNSEATH, Deputy Attorney General.

132. Fish and Game--Licensing Agents to Keep Money Separate.

CARSON CITY, January 9, 1952.

NEVADA FISH AND GAME COMMISSION, P. O. Box 678, Reno, Nevada.  
Attention: Mr. Frank W. Groves, Director.

GENTLEMEN: This will acknowledge receipt of your letter dated December 28, 1951, requesting our interpretation of section 49, Chapter 101, 1947 Stats. 365, as amended by section 1, Chapter 313, 1951 Stats. 507.

#### STATEMENT

Some of the licensing agents find it expedient to commingle money received from the sale of licenses with private business funds and at the same time keeping accurate account of the public money received. Question arises as to permissibility of this procedure.

#### OPINION

That portion of the amended statute applicable reads as follows: “\* \* \* All moneys collected by the agent shall be deemed to be public moneys of the State of Nevada and *shall not* be commingled with personal, *private or business funds but shall at all times be maintained distinct and separate* from any such funds, and the state shall have a prior claim upon these moneys over all creditors, assignees, or other claimants. Commingling of these funds with private or business assets or the use of these funds for private or business transactions shall be deemed to be a misuse of public funds, and punishable under the laws provided. \* \* \*.” (Italics ours.)

The word “commingle” is defined by Webster as meaning to mix or blend.

Whether the word “shall” is to be interpreted as mandatory or simply permissive is to be determined from the context of the statute. *Eddy v. Board of Examiners*, [40 Nev. 329](#).

It would have been a simple matter for the Legislature to have required an accounting only of the moneys to be collected as was the requirement of the statute prior to amendment. Instead, the Legislature went to some lengths to provide in clear and distinct language that such moneys are not to be commingled but kept separate. It is possible that the Legislature intended avoidance of mishap or complications involving such moneys resulting from business failure or lack of business acumen on the part of the licensing agent, but for whatever reason it seems clear that the Legislature intended the provision to be mandatory.

The same section of the amended statute also provides that the commission shall provide rules regarding the manner of accounting for licenses sold, but in any event the money must be kept separate whether in a separate container or by whatever means, and such is the opinion of this office.

Respectfully submitted,

W. T. MATHEWS, Attorney General.

By WM. N. DUNSEATH, Deputy Attorney General.

133. Nevada Hospital for Mental Diseases--Commitment by District Court of Mentally Ill Person to Nevada State Hospital Requires Adjudication by Court as to Sanity to Restore Civil Rights.

CARSON CITY, January 9, 1952.

S. J. TILLIM, M.D., Superintendent, Nevada State Hospital, P. O. Box 2460, Reno, Nevada.

DEAR DR. TILLIM: This will acknowledge receipt of your letter in this office January 8, 1952, presenting the following questions:

#### QUERY

1. Does commitment under the 1951 Statute, Chapter 331, affirmatively adjudicate the status of incompetency for all persons ordered hospitalized thereunder?
2. Chapter 23, Statutes of 1941, apparently specifically relates to persons judicially declared insane. Does this statute apply to persons committed under the 1951 Act?
3. Will persons committed under the 1951 Act require adjudication under the Act of 1941 in order to regain or exercise civil rights suspended under statutes for so-called insane

persons?

## OPINION

Chapter 331, Statutes of Nevada 1951, concerning the mentally ill of the State, section 21, specifies the duty of a District Judge when application is made under oath setting forth that any person is mentally ill. The judge may direct the clerk of the Court to issue subpoenas for the attendance of witnesses at the examination of such person. The person named in the application shall be examined by two physicians, and the physicians shall testify to the Court as to the mental condition of the patient. If the physicians shall certify upon oath that the charge is correct, and if the judge is satisfied that such person is mentally ill, he shall cause the person to be conveyed to the Nevada State Hospital, and place the person in charge of the superintendent of the hospital, together with a copy of the complaint, commitment, the physicians' certificate, and a full and complete transcript of the notes of the official court reporter made at the examination of the person before the committing judge.

Section 34 provides that when any commitment is issued under the provisions of this Act, the person committed, together with the warrants of the judge, the certificates of the physicians and the transcript of the notes at the hearing before the committing magistrate, must be delivered to the Sheriff of the county, and by him to the agent appointed by the superintendent to convey such person to the hospital.

Section 39 provides that the superintendent may discharge any patient who in his opinion will not be detrimental to the public welfare or injurious to himself.

Section 41 provides for the parole of a patient when, in the judgment of the superintendent, the patient will not be detrimental to the public welfare or injurious to the patient.

Notwithstanding the use of the medical term "mentally ill," the procedure is an inquisition to determine sanity and the District Court has jurisdiction to commit to a public institution a person found to be afflicted with any of the dangerous vagaries or mania detrimental to public welfare or injurious to the person himself.

The order of commitment affirmatively adjudicates the status of incompetency for persons committed on complaint as provided in sec. 21 of the Act.

Chapter 23, Statutes of 1941, the same being sections 3636-3636.03, 1929 N.C.L., 1941 Supp., as amended by Chapter 68, Statutes of 1945, provides that after a person's insanity has been judicially determined, such person can make no conveyance or other contract, delegate any power or waive any right until his restoration to presumed legal capacity, or until he has been judicially declared to be sane. A certificate from the superintendent of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom, shall establish the presumption of legal capacity in such person from the time of such discharge.

Section 3536.01 provides as follows: "The district courts of the several counties in this state shall have jurisdiction to hear and determine the question as to whether or not a person, previously adjudicated to be insane, shall be adjudicated to be sane."

This Act uses the terms "insanity" and "sane," while the 1951 Act uses the term "mentally ill." According to Webster's Dictionary, "Insanity is rather a social and legal than a medical term, and implies mental disorder resulting in inability to manage one's own affairs and perform one's social duties. It covers a variety of disorders \* \* \*."

As stated in 28 Am.Jur., page 689, "Much is to be said in favor of the view that a court which is vested by statute with jurisdiction to judge a person incompetent has jurisdiction, independent of any statute relating to restoration proceedings, of a further hearing had for the purpose of restoring the person previously adjudged incompetent to competency."

The Statutes of Nevada specifically invest jurisdiction in the District Courts to adjudicate the question of sanity of a person previously adjudicated to be insane. The term insane is used in its legal purport.

We are, therefore, of the opinion that your three questions necessitate an affirmative answer.

Very truly yours,

W. T. MATHEWS, Attorney General.

By GEORGE P. ANNAND, Deputy Attorney General.

134. Fish and Game--Commission To Set Fishing Season Dates.

CARSON CITY, January 11, 1952.

FISH AND GAME COMMISSION, P. O. Box 678, Reno, Nevada.  
Attention: Frank W. Groves, Director.

GENTLEMEN: This acknowledges receipt of your letter dated December 31, 1951, wherein you request the opinion of this office as to the permissibility of opening the fishing season on the Truckee River between April 19 or 26 and October 10 or 12.

#### STATEMENT

It has been recommended and is considered by the County Game Management Board that the change of dates is necessary in order to coordinate the fishing season with other waters.

QUERY

The specific question presented is whether or not it is permissible to set the opening date for the fishing season in the Truckee River prior to May 1.

#### OPINION

In view of the conflict between sections 22, 23, and 26 of the Fish and Game Act, it is necessary to determine which section prevails. This problem was considered in the opinion of this office released February 2, 1948, Opinion No. 570. Therein it was determined that section 26, being later in time than sections 22 and 23, prevails, and therefore April 15 is the earliest date of the open season in District No. 2. That opinion covers the question herein presented.

The advice of this office is also requested as to the permissibility of shortening the season.

Section 20, as amended, 1949 Stats. 296, provides ample authority for the State Fish and Game Commission to shorten the season but not to extend it.

It is, therefore, the opinion of this office that it is permissible to set the opening date for the fishing season in the Truckee River on April 15, and to so shorten the season as to permit the opening and closing dates to be April 19 or 26 and October 10 or 12.

Respectfully submitted,

W. T. MATHEWS, Attorney General.

By WM. N. DUNSEATH, Deputy Attorney General.

135. Insurance--Reciprocal or Interinsurance Companies Presently Licensed in Nevada.

CARSON CITY, January 14, 1952.

HON. PAUL HAMMEL, Insurance Commissioner, Carson City, Nevada.

DEAR MR. HAMMEL: Your letter of November 29, 1951, is hereby acknowledged. Our delay in response is primarily due to the press of other official business and to the seriousness and perplexity of the problem presented.

#### STATEMENT

On August 20, 1951, you requested the opinion of this office on the following question:

Your opinion is requested as to whether or not an insurance company engaged in the exchanging of reciprocal or inter-insurance contracts licensed in Nevada prior to the passage of present laws prohibiting the licensing of such companies, may be permitted to retain their license and continue to do business in Nevada.

The attention of the Attorney General is called to an opinion from the Attorney General's office, No. 458, dated May 14, 1947.

Upon receipt of the above-mentioned request, this office rendered Opinion No. 105, a copy of which you presently have in your files. This Opinion No. 105 upheld an earlier opinion of this office, to wit: Opinion No. 458, dated May 14, 1947, which briefly stated, held that under the status of the law at that time a company engaged in the exchanging of reciprocal or interinsurance contracts could *not* be licensed to do business in this State.

### OPINION

After arduous examination and investigation of the law, this office now finds, and is constrained to amend the above-mentioned opinions to hold that foreign companies now licensed to engage in the exchanging of reciprocal or interinsurance contracts in this State, may continue to be so licensed.

Irrespective of the several questions which were presented and the answers thereto by way of Opinions No. 458 of 1947 and No. 105 of 1951, the real basic question is: Whether or not a foreign reciprocal insurance company already doing business in this State may be authorized to continue to do such business.

In resolving this question and in arriving at an affirmative answer, it was necessary and legally proper to examine the entire Insurance Act and its historical background. The Insurance Act of 1941 is similar in many respects to the Insurance Code of Illinois and it is the understanding of this office that a goodly portion of our insurance laws were directly copied from said code.

Section 614 of the Illinois Insurance Code of 1937 provides among other things:

(e) "Company" means an insurance or surety company and shall be deemed to include a corporation, company, partnership, association, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage in any kind of insurance or surety business, *including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships and corporations.*

Section 3 of the Nevada Insurance Act of 1941, being section 3656.02, 1929 N.C.L. 1941 Supp., as amended 1951 Stats. 509, contains a subsection (e) identical to the above quoted, even as to punctuation.

It can, therefore, be said that individuals, order, company, partnership, association, society or aggregation of individuals engaging or who are attempting to engage in the "exchanging of reciprocal or interinsurance contracts," are "companies" within the meaning of section 3 of the Nevada Insurance Act.

The two companies herein concerned were organized under and pursuant to the laws of California 1928.

Section 3, subsection (g) Nevada Insurance Act, provides: “(g) ‘Foreign company’ means a company incorporated or organized under the laws of any state of the United States other than this state.”

It is conceded that the Nevada insurance laws are void of any provisions