

OLE AGE PENSIONS: Naturalized citizen entitled to benefits of Old Age Assistance Act even if records of Naturalization have been lost or destroyed, if citizenship can be shown by other evidence.

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May 15, 1936

Miss Reba E. Choate  
Assistant Commissioner  
Old Age Assistance Division  
Jefferson City, Missouri

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Dear Madam:

This will acknowledge receipt of your letter of recent date requesting an opinion from this office, which reads as follows:

"Section 6 of the Missouri Old Age Assistance Law state, 'old age assistance may be granted only to an applicant who . . . . is a citizen of the United States. . . . '.

"We have been informed by the Naturalization authorities that prior to 1906 the Federal Government did not keep duplicate records of persons receiving naturalization, therefore, unless the person becoming naturalized prior to 1906 did so under the Homestead Act, the only record of the granting of citizenship would be in the local court through which the final papers were granted.

"We have a few applicants for Old Age Assistance who claim to have received naturalization rights prior to 1906. The local court records have been destroyed by fire, the applicant has lost the papers granted him and the Federal Naturalization Office can give no help as they have

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no record and they decline to make a statement as to the applicant's citizenship standing and cannot accept affidavits of persons who claim to have seen the naturalization papers. In the absence of any official record to show that an applicant is a citizen of the United States and when the Federal Naturalization Office says that it is not in a position to make a statement pertaining to applicant's citizenship standing, what in the opinion of your office would be the citizenship standing of such an individual under the Old Age Assistance Law? In each case in question, the applicant has voted for many years and executed in every way all the rights of citizenship."

Section 6 of the Old Age Assistance Act, Laws of Missouri 1935, page 310, which specifies the qualifications an applicant must have before old age assistance may be granted to him, requires such an applicant to be a citizen of the United States. If an applicant is a citizen of the United States he is entitled to the benefits of the Act, provided he is otherwise qualified, whether he be a citizen by naturalization or birth. The fact that the Federal Government did not keep duplicate records of the naturalization of applicants for old age assistance and that the local court records pertaining to same have been destroyed would not affect such applicant's citizenship or his right to receive old age assistance. Official records of naturalization are, of course, the best evidence of same but where they have been lost or destroyed secondary evidence is admissible and should be accepted to prove citizenship.

2 Corpus Juris Section 161, page 1128, reads as follows:

"The naturalization laws expressly require the proceedings to be recorded, and in the absence of proof of the loss or destruction of the record, it can be proved only by itself or by an extract therefrom. Parol Evidence is ordinarily inadmissible for this purpose.

"Record destroyed or impossible of production.  
But in cases where the record has been lost or destroyed, or by reason of lapse of time and the death of the person naturalized the record cannot be produced, secondary evidence is admissible to prove naturalization. Before such proof outside of the record can be resorted to, some excuse must appear for the substitution of the secondary evidence for the documentary proof. "

Section 160 of the same Volume provides, in part:

"The burden of establishing naturalization is on the party affirming it and to whose care it is material \* \* \* \* \*

"Where no record can be produced showing the naturalization of an alien possessing the requisite qualifications to become a citizen,

naturalization may be inferred from the fact that for a long time he voted, held office, and exercised all the rights and privileges of a citizen. \* \* \*

part: 11 Corpus Juris, Section 22, page 786, reads, in

"Citizenship may be established by the admission in evidence of judgments of naturalization, and by a showing of the exercise of the rights and duties of citizenship."

Section 23 states:

"Direct testimony of a party that he is a citizen is competent; but such testimony given by a third person is incompetent as calling for a conclusion on the part of the witness."

Section 25 reads, in part:

"While it has been held that citizenship will not be presumed merely from the fact of having owned real estate, having voted, or having held an elective office, it seems that having participated in elections and having held elective offices are facts strongly tending to establish at

least a prima facie evidence  
of citizenship; "

In the case of Hogan v. Kurtz 24 L. Ed. 317, the  
Supreme Court of the United States, at l. c. page 319, said:

"Proceedings of the kind are re-  
quired to be recorded; but it was  
proved or conceded that the records  
of such proceedings in this District  
were destroyed many years ago; and  
in view of that fact, and of the  
long period between the purchase of  
the property and the other evidence  
exhibited in the record, the court  
left the question whether the party  
was or was not naturalized to the  
jury, and they found the issue in  
favor of the defendant. Seasonable  
objection was made by the plain-  
tiffs to the admissibility of the  
parol evidence, and they now contend  
that the court erred in admitting  
secondary evidence to prove that the  
party became a citizen.

"Enough appears to show that he  
possessed every requisite quali-  
fication to enable him to become  
a citizen at any time, and that he  
constantly exercised rights belong-  
ing to citizens; and, in view of  
the great lapse of time since he  
acquired the property, the court  
here is clearly of opinion that the  
assignment of error must be overruled."

#### CONCLUSION

In view of the above, it is the opinion of this  
Department that a naturalized citizen of the United States  
is entitled to receive the benefits of the Old Age Assist-  
ance Act if he is otherwise properly qualified, and that the

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fact that the Federal Government did not keep duplicate records of his naturalization and the court records admitting such person to citizenship have been destroyed, would not affect his citizenship or his right to old age assistance. Where the official records of the person's naturalization have not been kept or are lost or destroyed, he may prove the fact of his naturalization by secondary evidence. Direct testimony or an affidavit of an applicant that he is a citizen is competent evidence and should be received and considered, together with all the other facts pertaining to an applicant's citizenship. The fact that an applicant has voted and exercised all the rights of a citizen would make at least a prima facie case of citizenship and entitle such an applicant to the benefits of the Old Age Assistance Act, unless there is competent evidence to the contrary.

Yours very truly,

J. E. TAYLOR  
Assistant Attorney General

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General

JET:LC