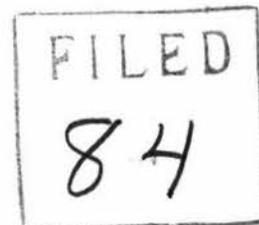


ELECTIONS:

Alien wife of United States citizen not entitled to vote when not naturalized.

August 21, 1950



Honorable George A. Spencer
517 Guitar Building
Columbia, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I presume that you have an opinion in the file on a question that I have had presented to me, but would like an opinion on the matter regardless of that and would like to have it some time in the near future.

"The problem is one of the right of a woman to vote who was a native Australian and who met a G.I. and she later came to this country and to Missouri and married this veteran in Missouri. Would she be entitled to vote in our elections?

"There is no question but what the husband can vote. In other words would her marriage to a qualified voter entitle her to vote? She has not taken out any citizenship papers.

"Would it make any difference if under the same circumstances they had been married in Australia and later came back to the home and residence of her husband?"

Section 2 of Article VIII, Constitution of Missouri, 1945, provides in part 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, and

Honorable George A. Spencer

no other person, shall be entitled to vote
at all elections by the people; * * *

(Underscoring ours.)

The law regarding the acquisition of citizenship upon the marriage of an alien to an American citizen is stated in the case of *People v. Board of Elections*, 51 N.Y.S. 2d 216, at l. c. 219, as follows:

"The alien wife of an American citizen would acquire American citizenship if she was married to the citizen, after March 2, 1907, and prior to September 22, 1922. If her husband were a native born, citizenship would be acquired upon the marriage. If the husband were naturalized, the wife's citizenship would be derived from his naturalization. *U. S. v. Kellar*, C.C., 13 F. 82; *Kelly v. Owen*, 7 Wall. 496, 19 L. Ed. 283. The Act of Congress of 1922, 42 Stat. 1022 was amended July 3, 1930, 46 Stat. 854, March 3, 1931, 46 Stat. 1511, and May 24, 1934, 48 Stat. 797. Upon the amendments citizenship was not acquired by marriage, but if the alien spouse were eligible, he or she could be naturalized upon full compliance with the naturalization laws, but with no declaration of intention, and only three years residence prior to filing the petition."

Inasmuch as the Missouri Constitution requires that a person be a citizen of the United States in order to be eligible to vote, the mere fact of marriage to a citizen of the United States and a resident of Missouri would not entitle an alien to vote in Missouri inasmuch as she does not by reason of such marriage acquired a United States citizenship. The situation is the same regardless of the place where the marriage occurred.

CONCLUSION

Therefore, it is the opinion of this department that an alien who marries a citizen of the United States and a resident of Missouri is not thereby entitled to vote in Missouri elections inasmuch as such marriage does not confer United States citizenship upon the alien wife.

APPROVED:

Respectfully submitted,

J. E. TAYLOR
Attorney General

ROBERT R. WELBORN
Assistant Attorney General