Opinion No. 14-1192

April 15, 1914

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TO: Rupert F. Asplund, Chief Clerk, Department of Education, Santa Fe, New Mexico.

SCHOOLS.

Discussion of citizenship of member of a board of school directors.

OPINION

*{*50}* We have your letter of the 13th inst., asking our opinion as to whether or not Mr. J. E. Owens is entitled to occupy and hold the position of school director because of facts affecting his citizenship. We understand from your letter that Mr. Owens came to this country when quite young, in company with his father, who was an alien; that when the younger Owens was about fifteen years of age his father declared his intention of becoming a citizen of the United States; that the father was not actually naturalized until after the son had obtained his majority, and that the younger Owens has never made application for citizenship in this country.

Section 2172 of the Revised Statutes of the United States, in effect, provides that children of persons becoming naturalized, if under the age of twenty-one years at the time of such naturalization and dwelling within the United States, shall be considered citizens thereof.

So far as we are able to ascertain, this is the only provision of law under which Mr. Owens could claim to exercise the rights of citizenship. Construing this section literally, it would seem, at first blush, that Mr. Owens is not a citizen of the United States. And this conclusion would seem to be reinforced by a doctrine of law laid down by the Supreme Court of the United States in several cases that the method and procedure of naturalization prescribed by the Congress of the United States are exclusive. The doctrine that the citizenship of the father is that of the child, (a person under the age of twenty-one years) so far as the laws of this country are concerned, would strengthen this theory also.

The leading case on this subject is Boyd vs. Thayer, 147 U.S. 135, et seq. Mr. Boyd had been elected Governor of Nebraska by a plurality of votes, but the person occupying the office of Governor at the time of said election and the qualification of Boyd, refused to recognize the right of Boyd to the office, claiming that Boyd was not a citizen of the United States. The facts were that the father of Boyd in 1849 declared his intention to become a citizen of this country; that at such time young Boyd, the defendant, was about fifteen years of age; that the father of Boyd did not actually become naturalized *{*51}* until the year 1890, at which time the younger Boyd was fifty-six years of age.

Young Boyd had never made application for citizenship. The court held that Boyd was a citizen of the United States. It arrived at that conclusion on the ground, first, that the younger Boyd became a citizen of the State of Nebraska and of the United States by what is termed "collective naturalization," which is effected by annexation of public domain under certain laws and circumstances, and secondly, because the declaration of intention to become a citizen by the elder Boyd at a time when the younger Boyd was a minor conferred upon the younger Boyd an inchoate status bordering on citizenship. It seems quite clear to the writer that the court took into serious consideration the fact that the younger Boyd had occupied many official positions which only citizens could hold, and had believed at all times that he was a citizen of the United States. An unofficial quotation of the most important matter of the case in Federal Statutes Annotated seems to indicate that the writer thereof took the view that the inchoate status of Boyd as a citizen became enlarged by his various public acts and that thereafter he was a citizen of the United States. 2 Cyc. 118, referring to the Boyd case, says:

"If alien father takes an oath declaring an intention to become a citizen his minor child acquires an inchoate status as a citizen, and if he attains his majority before the father completes his naturalization that status is capable of being converted into complete citizenship by other means than the direct application provided for by the naturalization laws."

Van Dyne, an equally eminent authority of law, declares that:

"The naturalization of an alien, after his son, born out of the United States, has become of age, does not make the latter a citizen." Page 113.

Authority for this statement is claimed by the author to exist in the Boyd case, for he cites it as such.

Because of the confusion of constructions of the Boyd opinion, and the fact that the opinion in that case was concurred in by a majority of the court on a theory other than that Boyd acquired an inchoate status by reason of the declaration of intention to become a citizen on the part of his father, and because the theory of law adopted by the majority of the court to arrive at its conclusion cannot be invoked in the question presented in this matter, it would seem that we are entirely without authority on the subject. However, it appears to the writer that Mr. Owens acquired no rights of citizenship by the naturalization of his father, and to all intents and purposes is an alien of the United States.

Notwithstanding this conclusion reached by us, neither your department nor Mr. Owens ought to anticipate any trouble. We do not understand that there is any effort being made to expel or oust Mr. Owens from his office. This could be accomplished only by quo warranto. The consent of this office must first be obtained before such a suit could and would be entertained in the courts.