

CITIZENSHIP: Service in the United States military forces does not automatically create citizenship.

August 3, 1939

Honorable Walker Pierce
Supervisor
Department of Liquor Control
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion dated August 1, 1939, and which reads as follows:

"In reply to a question on our application for a permit to sell intoxicating liquor in which the applicant is asked, in case he is a naturalized citizen, to give date and place of naturalization, some of the applicants recite service in the United States Army.

Does service in the United States Army by an unnaturalized person create citizenship for him?"

The Sections of the United States Code of Laws pertaining to naturalization and giving war veterans certain preferences in applying for naturalization are Sections 391, 392, 393, 394 and 395 of Title 8, Chapter 9, which are as follows:

Section 391. "Any person who was serving in the military or naval forces of the United States at the termination of the World War, and

any person who before the termination of said war may have been honorably discharged from the military or naval services of the United States on account of disability incurred in line of duty, shall, if he applies to the proper court for admission as a citizen of the United States, be relieved from the necessity of proving that immediately preceding the date of his application he has resided continuously within the United States the time required by law of other aliens, or within the State, Territory, or the District of Columbia for the year immediately preceding the date of his petition for naturalization, but his petition for naturalization shall be supported by the affidavits of two credible witnesses, citizens of the United States, identifying the petitioner as the person named in the certificate of honorable discharge, which said certificate may be accepted as evidence of good moral character required by law, and he shall comply with the other requirements of the naturalization law.

Section 392. "Any alien who served in the military or naval service of the United States during the time this country was engaged in the World War, might file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States.

Section 393. "Any alien, or any person owing permanent allegiance to the United States embraced within sections 388 to 390, 392 to 394 of this title, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding

the limitation upon the jurisdiction of the courts specified in section 357 of this title, provided he appears with his two witnesses before the appropriate representative of the Bureau of Naturalization and passes the preliminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the Government from the Bureau of Naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed prima facie evidence to satisfy all of the requirements of residence within the United States and within the State, Territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, identifying the applicant as the person named in the certificate or (of) honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed. (May 9, 1918, c. 69, Sec. 1, 40 Stat. 543.)

Section 394. "Any petition for naturalization filed under the provisions of sections 388 to 390, 392 to 394 of this title, may be heard immediately, notwithstanding the law

prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court."

Section 395. "As to all aliens who, prior to January 1, 1900, served in the armies of the United States, and who were honorably discharged therefrom, section 2166 of the Revised Statutes of the United States-- which read as follows: 'Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the Regular or the Volunteer Forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States'--shall be and remain in full force and effect."

From a reading of the above, it is apparent that said sections do not require the customary residence and declaration of intention to become a citizen, which are required of persons who have not served in the military forces of the United States.

In any event, the veteran must make an application for naturalization as required by the general statute. The

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only exception to the above is found in Section 3, Chapter 1 of Title 8, United States Code of Laws, which provides that an American Indian, who served in the American forces during the World War, may be granted full citizenship without such petition upon identification in a court of competent jurisdiction.

It is our conclusion, therefore, that service in the United States Army by an alien or unnaturalized person does not automatically make him a citizen of the United States.

Respectfully submitted,

ROBERT L. HYDER
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

RLH:RT