

BOARD OF HEALTH: Two questions involving names of naturalized citizens.

September 1, 1942

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Mr. V. M. Scott
Supervising Clerk
State Board of Health
Jefferson City, Missouri

Dear Mr. Scott:

The Attorney-General wishes to acknowledge receipt of your letter of August 31, in which you request an opinion of this department. This letter, omitting caption and signature, is as follows:

"Is the American spelling of a German name, although inconsistent with the German method of spelling, accepted in Courts of Law? For example: An applicant desires a birth record under the name of Kehl (American Method of spelling surname) and the name was originally spelled Kuehl, which is the German spelling of the name. Would it be advisable for the applicant to have his name changed to the American version by court order?

"Question II: An applicant for naturalization being naturalized in the year of 1896 in Jackson County, Mo. has a son born in Bavaria, Germany in 1883. There is no reference to the fact of naturalization of any other member of this man's family on the naturalization certificate, and the certificate in question gives the name of Jack Holt and the name of the applicant for birth record is Max Hoedl. At the time of issuance of these papers, was the fact of naturalization of the parent sufficient to naturalize a minor child if the child arrived

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in this country prior to the age of twenty-one and lived here continuously for five years? In event the name of Hoedl were changed at the time of naturalization to Holt, should there not have been some reference to the fact of change in name at time of naturalization?"

Your request contains two questions, the first of which is whether or not an applicant for a birth record and whose name at present is Kehl, the American spelling, should have the spelling of his name changed to Kuehl which was the original German spelling.

We believe that the two versions of the applicant's name will be governed by the doctrine of "Idem Sonans", which rule is recognized in this state. As authority therefor, we wish to cite you to Davison v. Bankers Life Assn., 150 S. W. 713, 1. c. 715, 166 Mo. App. 625, In that case the court said:

"The rule of idem sonans is that absolute accuracy in spelling names is not required in a legal document or proceedings either civil or criminal; that if the name, as spelled in the document, though different from the correct spelling thereof, conveys to the ear, when pronounced according to the commonly accepted methods, a sound practically identical with the correct name as commonly pronounced, the name thus given is a sufficient designation of the individual referred to, and no advantage can be taken of the clerical error." (4 Words & Phrases, 3380).* * * * *"

We also wish to cite you to Ruhin v. Bussakin, 130 S. W. (2d) 224, wherein the court discussed this matter at length.

Thus it appears to us and is the opinion of this Department, that in view of the fact that this name is pronounced the same and sounds the same, that it will be unnecessary for the applicant to have his name changed by a court order, for the purposes set out in your request.

The second question in your request has to do with the status of a child born in Germany, of alien parents, whose father subsequently was naturalized in this country. In answering this question we will cite you to Title 8, Chapter 11, Section 714, U.S.C.A., at page 679, which provides as follows:

"A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

"(a) The naturalization of both parents; or

"(b) The naturalization of the surviving parent if one of the parents is deceased; or

"(c) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents; and if --

"(d) Such naturalization takes place while such child is under the age of eighteen years; and

"(e) Such child is residing in the United States at the time of the naturalization of the parent last naturalized under subsection (a) of this section, or the parent

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naturalized under subsection (b) or (c) of this section, or thereafter begins to reside permanently in the United States while under the age of eighteen years."

As can be seen, after reading the statute cited above, your second question is going to be governed by the facts. This statute appears to be very clear and unambiguous. If both parents of the applicant or the surviving parent, if one is deceased, or the parent having legal custody of such applicant where the parents are separated, have been naturalized and if such parents' naturalization took place before the child was eighteen, and while living in the United States while such naturalization took place, he is a citizen of the United States. If the facts of this case are applied with the law, which seems to be plain, your second question will be answered.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
(Attorney-General)

JSP/rv