

**Registration, of Naturalized Citizens. Naturalization, Evidence Of. Registry Agent, Duty Of in Registering Naturalized Citizens. Naturalization Papers, Duty to Exhibit to Registry Agent. Registry Agent, Authority to Demand Naturalization Papers.**

Under the provisions of Chapter 113, Laws of 1911 the registry agent is not authorized to demand as a condition precedent to registering an applicant that he shall exhibit to him documentary evidence of his right as an elector.

Sec. 22, Chapter 113, Laws of 1911, contemplates the exhibition of naturalization papers to registry agents providing they are in the possession of the applicant at the time he applies for registration.

December 8, 1911.

Hon. Justin M. Smith,  
County Attorney,  
Bozeman, Montana.

Dear Sir:

I am in receipt of your letter of the 4th inst., in which you ask my opinion as to what is the proper method for the county clerk and recorder to follow in registering electors of foreign birth who have become naturalized through the naturalization of their parent.

The minor child of an alien, though born out of the United States, if dwelling in the United States at the naturalization of his parent becomes a citizen by virtue of such naturalization.

2 Cyc 117, and cases cited.

It is, therefore, not necessary for the applicant coming within the above rule to procure separate papers for himself but evidence of naturalization of the father would be evidence of naturalization of the son, provided, proper proof was made to the county clerk identifying the applicant as the son of the naturalized person referred to in the papers presented.

As a general rule naturalization cannot be proved by parol, but where the applicant presenting a duly exemplified copy of the record of naturalization of his parent, he may prove by his own oath that it was issued to his parent, that he was the child of such parent, and was a minor child dwelling within the United States at the time of the naturalization of his parent. See,

2 Cyc 115.

You state in your letter that the county clerk and recorder of your county has made a rule that the applicant shall produce a certified copy of his father's naturalization papers. This I do not consider the county clerk has any authority under Chapter 113, Laws of 1911, to require. The only section of said chapter requiring the exhibition of naturalization papers is contained in the latter portion of Sec. 12, which provides that in case a person applies for registration who has not obtained his final naturalization papers, but who will be entitled to and

who will have received such papers at the time of the election for which he registers may be registered by the county clerk but the county clerk shall write opposite the name of such person the words "to be challenged for want of naturalization papers" and the provision is made for the exhibition of such papers to the judges of the election.

However, with reference to the exhibition of papers of a person who is already a qualified elector and entitled to be registered there is no provision. Sec. 10 of said Chapter 113, provides:

"When a person so registering is of foreign birth, the fact of the exhibition of, or failure to exhibit, his certificate of naturalization or a certified copy thereof, must be noted in the column provided for that purpose."

The words "or failure to exhibit" in my opinion expressly contemplates that no requirement is made of the applicant to exhibit his final papers, but undoubtedly the provision is made for the entry of this memorandum by the clerk for the purpose of challenging electors as not being entitled to registration. The affidavit provided for in Sec. 11 of said Chapter contains a provision reciting the manner of naturalization and it is my opinion by the provisions of this Chapter the county clerk and recorder would have no more authority to require at the time of registration, the exhibition of final naturalization papers than he would have to require of a native born elector to exhibit his birth certificate; neither would a naturalized citizen, except in the case mentioned in Sec. 12 of said act, be required to exhibit a copy of his final papers at the time of casting his ballot, any more than would a native born citizen be required to exhibit a birth certificate at the time of voting.

The applicant before being registered and thus entitled to vote is required to subscribe to an affidavit as to his qualifications. If the facts stated in the affidavit are false the affiant may be prosecuted and punished for perjury, or in case a person was registered who was not entitled to be registered by reason of the fact that he was not a citizen of the United States and he subsequently cast his ballot at an election by virtue of such unlawful registration and there were sufficient of such illegal votes to change the result of the election, then the election would be successfully contested upon that ground, but there is no authority of law, as above stated, authorizing the county clerk and recorder to demand as a condition precedent to registering an applicant, that he shall exhibit to him documentary evidence of his right as an elector. If the county clerk had this authority it would necessarily follow that he would have authority to pass upon the sufficiency of the papers exhibited to him, and with this authority he is not vested.

Yours very truly,

ALBERT J. GALEN,

Attorney General.