

Aliens—Real Estate.

Lands purchased for business and residential purposes by an alien prior to the enactment of chapter 58, laws of 1923, are not held in violation of the constitution of this state and therefore not subject to forfeiture.

February 3, 1928.

Arthur C. Erickson, Esq.,
County Attorney,
Plentywood, Montana.

My dear Mr. Erickson:

You have requested my opinion on the following question:

An alien purchased land for business and residence purposes about the year 1918. What is the status of the property if still owned by such alien, or in the name of another person for the use of such alien, and under such circumstances, what rights has the alien under the provisions of chapter 58, laws of 1923?

In regard to section 2 of chapter 58, supra, you state:

“Lands now held by or for aliens in violation of the Constitution of the state are forfeited to and declared to be the property of the state.’ It is my understanding that any lands owned by an alien (Chinese or Japanese) even tho acquired prior to March 21st, 1923, other than mineral lands and lands used in the development thereof, are held in violation of the Constitution of the state. If my conclusion is correct, then a person who acquired real estate for business and residence purposes, prior to the passage and approval of said chapter 58, is holding the same in violation of the Constitution and therefore would be covered by the provisions of section 2, hereinbefore quoted, and such real estate would be automatically subject to forfeiture.”

Your conclusion is no doubt based upon section 25, article III of the state constitution. However, this provision of the constitution was adopted for the purpose of insuring to aliens the right to hold mineral lands and lands used in the development thereof and probably with the view of preventing the legislature from ever depriving aliens of this right. It does not mean that aliens could not hold real estate except for the purposes mentioned therein. I am therefore unable to agree with your conclusions.

Paragraph c of section 6 of this act provides that one acquiring the knowledge therein mentioned must disclose the fact to the attorney general or the prosecuting attorney of the county, but in all other instances it is necessary that a demand be made on the alien or other parties mentioned therein for the information before they could be charged with a misdemeanor for refusing to divulge the same.

I agree with you that under the provisions of section 8 of the act

an alien may transfer real property with immunity to one not under an alien's disability.

It is therefore my opinion that lands purchased for business and residential purposes by an alien prior to the enactment of chapter 58, supra, are not held in violation of the constitution of this state and therefore not subject to forfeiture.

Very truly yours,

L. A. FOOT,
Attorney General.