

No. 145

**FISH AND GAME—FILIPINOS—ALIEN'S FISHING LI-
CENSE—FISHING—HUNTING—TRAPPING**

Held: The Filipino is entitled to an alien's fishing, hunting or trapper's license.

June 19, 1941.

Dr. J. S. McFarland
State Fish and Game Warden
Capitol Building
Helena, Montana

Dear Dr. McFarland:

You have requested an opinion from this office as to the type of license to which a Filipino is entitled.

Under the provisions of Section 3682, Revised Codes of Montana, 1935, it shall be unlawful and a misdemeanor for any person to pursue, hunt, trap, take, shoot or kill, or attempt to trap, take, shoot or kill any game animal, game bird, or fur-bearing animal, or take, kill, trap, or fish for any fish within this state, or have, keep, possess, sell, purchase, ship or reship any imported or other fur-bearing animal, or parts thereof, without first having obtained a proper license or permit from the Commission so to do.

Under the provisions of Section 3683, Revised Codes of Montana, 1935, licenses shall be divided into the following classes:

Class A.	Resident game birds and fishing license;
Class AA.	Resident big game license;
Class AAA.	Resident Sportsmen's license;
Class B.	Non-resident fishing license;
Class B-1.	Non-resident game bird license;
Class B-2.	Non-resident big game license;
Class C.	Alien fishing license;
Class C-1.	Alien game bird license;
Class C-2.	Alien big game license;
Class D.	Trapper's license;
Class E.	Fur dealer's license.

We admit that, under the provisions of Section 3682, the Filipino is required to have the proper license before he can be permitted to hunt, fish, trap or deal in furs. Therefore, we turn to the provisions of Sections 3683-3685, Revised Codes of Montana, 1935, to determine what class of license the Filipino is entitled to, and herein lies the conundrum.

To be entitled to a Class A, AA, or AAA, B, B-1 or B-2, or D license, the applicant must be a citizen of the United States. QUERY: Is the native Filipino a citizen of the United States? The answer is "no." However, under federal naturalization statutes:

"Citizenship by naturalization is limited to the white race and Africans, and such limitation extends to native Filipinos as a racial group, although individual Filipinos, possessing necessary personal qualifications for acceptance in service of Navy, or other designated establishment, and satisfactorily completing three years' term of enlistment therein, are eligible for naturalization.

"Native Filipinos may be citizens of the Philippine Islands, but are not citizens of the United States."

De Cano v. State, 110 Pac. (2nd) 627.

Therefore, the native Filipino, not being a citizen of the United States, is not entitled to a Class A, AA or AAA, B, B-1 or B-2, or Class D license.

To be entitled to a Class C, C-1 or C-2 license, the applicant must be an alien. QUERY: Is the native Filipino an alien? The answer is "no."

"Citizens of the Philippine Islands are not aliens. They owe no allegiance to any foreign government, but do owe allegiance to the United States."

Roque Espiritu De La Ysla v. United States, 77 Fed. (2nd) 988;

Toyota v. United States, 268 U. S. 402, 410-412, 45 S. Ct. 69 Ed. 1016;

De Cano v. State, supra.

Therefore, the native Filipino, not being an alien, is not entitled to a C, C-1 or C-2 alien's license.

Unfortunately, the Filipino finds himself in an embarrassing situation, in that he is neither a citizen of the United States nor an alien, and, as a

result thereof, not entitled to a hunting or fishing license of any class. Neither is he entitled to a trapper's license. He can, however, qualify for a Class E (fur dealer's license), as he is neither required to be a citizen of the United States nor an alien, but this, in a measure, is beside the point.

The laws of the State of California take care of the problem presented here by classifying licenses as those issued to citizens and non-citizens.

But we must, by some manner or means, straighten out this peculiar quirk in our law so as to enable the Filipino to enjoy the privilege of hunting, fishing and trapping as others in our State are allowed to do upon securing the proper license. To hold that every other person in the State of Montana, both the citizen and the alien, is privileged to purchase either a hunting, fishing or trapper's license, save and except the Filipino, is wrong—wrong in principle and from every standpoint of justice. Therefore, we turn to an old familiar maxim of equity:

“Equity will not suffer a wrong to be done without a remedy.”

But let us examine Article III, Section 25, Constitution of Montana:

“Aliens and denizens shall have the same right as citizens to acquire, purchase, possess, enjoy, convey, transmit, and inherit mines and mining property, and milling, reduction, concentrating, and other works, and real property necessary for, or connected with, the business of mining and treating ores and minerals: provided, that nothing herein contained shall be construed to infringe upon the authority of the United States to provide for the sale or disposition of its mineral and other public lands.”

“A denizen is a stranger admitted to residence and certain rights in a foreign country; . . .”

Ex Parte Gilroy, 257 Fed. 110, 128.

In DeCano v. State, supra, the Court held:

“Native Filipinos, as a race or class, are non-citizens ineligible to citizenship by naturalization within ‘anti-alien’ land law, prohibiting ownership of land by ‘aliens,’ who are defined in such law as all persons who are non-citizens and who are ineligible to citizenship by naturalization.”

In Hastings v. Anacortes Package Company, 29 Wash. 224, 69 Pac. 776, the Court held:

“The constitutional prohibition against the ownership of lands in this state by aliens does not prevent the granting of a fishing license to such corporations, since the license is only a roving license, and confers no title to real property.”

It would appear that, if aliens and denizens are accorded all the rights and privileges enumerated under the provisions of Section 25, Article III, Constitution of Montana, and the native Filipino is classified as an alien under the “anti-alien” land law of the State of Washington, certainly as a matter of justice and equity, as well as sound public policy, the Filipino should at least be entitled to the alien's license provided for under the provisions of Section 3682-3685, Revised Codes of Montana, 1935, as we so hold.

Sincerely yours,

JOHN W. BONNER
Attorney General