

April 24, 1919.

OPINION NO. 829.

(This opinion is overruled by Opinion No. 831.)

INHERITANCE TAX: ALIEN:

The share of an estate passing to a woman born in Hawaii prior to annexation of non-American parentage and who, prior to annexation, was married to a German subject, and whose husband died in 1918, is taxable as property passing to an alien within the meaning of Act 223, Session Laws of 1917.

SAME: SAME:

Under the facts as presented the woman never having acquired any status as an American citizen, cannot resume the status of an American citizen upon the death of her husband.

Hon. Delbert E. Metzger,  
Treasurer, Territory of Hawaii,  
Honolulu, Hawaii.

Dear Sir: I beg to acknowledge the receipt of your communication of the 9th inst., in which you request the opinion of this department with respect to the citizenship of the widow and children of Frederick William Glade, deceased.

It appears that Mrs. Glade was born in Honolulu in 1866 of non-American parents and remained a citizen of Hawaii until her marriage in 1888 to Mr. Glade, who was a German subject and retained that status until his death in 1918.

Mr. and Mrs. Glade lived during the whole of their married life in Hawaii and on the mainland of the United States. The children were all born either in Hawaii or on

the mainland and in the absence of any fact tending to show that they elected to claim the citizenship of their father. I am compelled to advise you that they are all citizens of the United States. The citizenship of the widow presents a case of more difficulty.

I understand from the correspondence that she now claims that because of her birth in Hawaii she had the right, on the death of her husband, to elect to resume her status as an American citizen. It appears from the correspondence that she has been recognized as an American citizen by the Federal Passport Bureau. In a letter written by H. Stanley Heinrichs to Albert C. Agnew, of the District Attorney's office in Oakland, California, I find the following statement:

“Since the death of her husband she has evinced her intention of resuming the citizenship of her nativity, which became American when the Hawaiian Islands became American, by continuing to reside in the United States and by exercising the privileges and duties of a citizen of the United States.”

It appears to me that the writer of this letter and the Passport Bureau have proceeded upon the wrong assumption when they say Mrs. Glade's nativity became American on the date of annexation. Section 4 of the Organic Act provides:

“That all persons who were citizens of the Republic on August 12, 1898, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.”

It is clear from a reading of the foregoing section that the privileges of citizenship were extended only to such persons who on August 12, 1898, were citizens of Hawaii.

Mrs. Glade on that date, however, being married to a German subject, was herself a subject of Germany, and,

therefore, neither her nativity nor her citizenship became American through the treaty of annexation or the Organic Act. Her Hawaiian nativity, therefore, under these circumstances, gives her no rights whatever. It is citizenship and not nativity that counts. At no time, from the date of her birth to the present time, has Mrs. Glade been entitled to claim the rights of an American citizen. Never at any time having been an American citizen, she certainly now cannot resume a status which she never at any time enjoyed.

I am of the opinion, therefore, and so advise you, that Mrs. Glade's share in the estate of her husband must be taxed as the share of an estate passing to an alien within the meaning of Act 223, Session Laws, 1917.

I return herewith the file in this matter which you forwarded to me. I am,

Yours very truly,

HARRY IRWIN,  
Attorney General.