

HOUSE No. 1596

The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
BOSTON, May 28, 1918.

Hon. CHANNING H. COX, *Speaker, House of Representatives.*

DEAR SIR:—I beg to acknowledge the receipt of an order from the House of Representatives in the following form:

Ordered, That the House of Representatives hereby requests the opinion of the Attorney-General on the following question of law: Would Senate bill No. 321 of the current year, being "An Act to provide for the registration of certain aliens," if enacted into law be valid, and in accordance with the provisions of the Constitution of the Commonwealth, and the Constitution, laws and treaties of the United States?

The important sections of the bill in question are as follows:

SECTION 1. Every male alien, twenty years and over, unless enrolled in the military or naval service of the United States, who has resided in this Commonwealth for twelve months prior to the first day of May in the current year, shall, between the first and twentieth days of May in said year or within such further time not exceeding thirty days as the city or town clerk may for good cause allow, file with the clerk of the city or town wherein he resides, upon blanks to be furnished by said clerk, a written statement setting forth his name, age, residence by street and number, his employment and place of business, place of birth, port or point of entry into the United States and date. Said statement shall be accompanied by a registration fee of five dollars. On or before the first day of July in the current year the proceeds of all such registration fees received by the city or town,

less the expense to the city or town of conducting said registration, to be approved by the treasurer and receiver general, shall be paid into the treasury of the Commonwealth.

SECTION 3. Failure on the part of any alien designated in section one to comply with the provisions thereof shall be punished by a fine of not less than twenty-five dollars to the use of the Commonwealth.

The proposed bill contains two main features. It requires "every male alien, twenty years and over, unless enrolled in the military or naval service of the United States, who has resided in this commonwealth for twelve months prior to the first day of May in the current year" to register with the city or town clerk of his residence and file a written statement of certain facts concerning his history. Failure to comply with this requirement subjects the alien to a fine of "not less than twenty-five dollars." The bill then provides: "Said statement shall be accompanied by a registration fee of five dollars."

In my opinion, at least in time of war, the registration feature of this bill, if enacted into law, would be valid as a reasonable police regulation in the interest of the public safety. In time of war it is vital that it be publicly known what residents of the community are alien enemies. Furthermore, I am of the opinion that it cannot be said that the General Court would not be warranted in concluding that aliens who are subjects of neutral or even friendly nations are more likely than citizens to become involved in unfriendly or hostile acts or enterprises. The registration requirement of this bill, in providing for a public record in time of war of the facts specified regarding persons who are likely to be a source of danger to the community, seems to me a measure reasonably directed toward the preservation of the public safety.

The difficulty with the proposed act arises from the requirement of the registration fee of five dollars. The bill, in its present form, as passed to be engrossed in the Senate, seems to indicate that it is intended, in part at least, to be a revenue measure. Section 1 closes with the following provision:

On or before the first day of July in the current year the proceeds of all such registration fees received by the city or town, less the expense to the city or town of conducting said registration, to be approved by the treasurer and receiver general, shall be paid into the treasury of the Commonwealth.

Whether the amount of money to be realized by such a fee could be regarded as not disproportionate to the financial burden imposed by the registration upon the Commonwealth and its cities and towns is, in the first instance, a legislative question. The judgment of the General Court would not lightly be set aside by the courts. If this fee can be deemed to bear a reasonable relation to such cost, it would then be imposed in connection with or as a part of a valid police regulation, and would not, in my judgment, in that event, be in violation of the provisions of the Fourteenth Amendment to the Federal Constitution, prohibiting the denial of the equal protection of the laws. Whether such a fee can be imposed under the Constitution of the Commonwealth, in view of the fact that it would in no way be connected with any privilege granted by the laws of the Commonwealth, is a grave question. It is unnecessary now to consider that matter, since, in my opinion, in any event, the requirement of this fee, whatever its character, is inconsistent with the provisions of treaties entered into between the United States and various other nations.

From a memorandum furnished to His Excellency the Governor by the Secretary of State of the United States, submitted to me with the order of the House, I make the following quotations: A treaty between the United States and Japan, concluded February 21, 1911, referring to citizens or subjects of each country traveling or residing in the other, provides, —

They shall not be compelled, under any pretext whatever, to pay any charges or taxes other or higher than those that are or may be paid by native citizens or subjects.

A provision of similar import in a treaty between the United States and Serbia, concluded October 14, 1881, declares, —

They shall be at liberty to exercise their industry and trade, both by wholesale and by retail, in the whole extent of both territories, without being subjected as to their persons or property, or with regard to the exercise of their trade or business, to any taxes, whether general or local, or to any imposts or conditions of any kind other or more onerous than those which are or may be imposed upon natives or upon the subjects of the most favored nation.

Other treaties contain agreements similar in phraseology or import; for example, see treaty between the United States and Spain, concluded July 3, 1902, and treaty between the United States and Switzerland, concluded November 25, 1850. Treaties with various other nations secure to the subjects of those nations the privileges and protection enjoyed in this country by the subjects of the most favored nation. Such a clause in any treaty would, of course, adopt as a part of such treaty the protective obligation of the character under discussion, which is the broadest in its scope in any of the treaties of this character entered into by the United States.

It requires no discussion to establish that the registration fee provision of the proposed bill is in conflict with these treaty obligations. Whatever the limits of the treaty-making power in its relation to the police power of the state, I cannot doubt that it extends to the protection of resident aliens against the imposition of fees and excises because of their alienage. Treaties duly entered into by the United States are, by the Constitution, expressly made "the supreme law of the land" (U. S. Const., art. VI), and it follows that the legislation of any state in conflict therewith is invalid.

Accordingly, I must advise the House of Representatives that Senate Bill No. 321, entitled "An Act to provide for the registration of certain aliens", would be invalid if enacted into law in its present form.

Yours very truly,

HENRY C. ATTWILL,
Attorney-General.