

DEPT. OF STATE

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THE OFFICE OF THE
BOARD OF POLICE COMMISSIONERS.

San Francisco, July 3, 1907.

Hon. K. Matsubara,
Acting Consul of Japan,
1274 O'Farrell St., San Francisco.

Dear Sir:-

At a meeting of the Board of Police Commissioners, held on July 2, 1907, your communication of July 1, 1907, requesting a statement of the official action of this Board relative to the denying of the licenses to Japanese to conduct Intelligence Offices in this city, was read.

We beg to advise you that at a meeting of the Board of Police Commissioners held on June 27, 1907, the following opinion was rendered relative to the application of Henry Fruya, on file in this office, for a Permit as an Intelligence Office Keeper:

"Petitioner has filed his application for a permit to keep an Intelligence Office at the S/E Cor. Fillmore and Sacramento Streets, in the City and County of San Francisco, State of California. The granting of such permits is confided to this Board by the Charter of this State. Section 7, Chapter 4, Article 8, of the Charter reads as follows:

"The Chief of Police shall have powers of general inspection, supervision and control over all pawn-brokers, peddlers, junk shop keepers, dealers in second-hand merchandise, auctioneers and intelligence office keepers. All persons engaged in such callings must first procure permits from the Commissioners."

"It is evident that the granting of such permits and the conduct of business thereunder, concerns proper police regulation and should be exercised with great care. This Board has been given practically unlimited powers with respect to such matters and may reject any and all applications for such permits. It is doubtful if the action of the Board could be subject to review.

"The granting of such permits involves an inquiry into the character of the applicant, the location of the office, matters of sanitation, the number of such permits already issued, and many other things which to to the propriety of granting such permits when considering the peace, morals and good order of the community. It is urged in support of the application that the petitioner is a subject of the Emperor of Japan, and as such is entitled to the privilege or right which he now seeks by virtue

of the Treaty which exists between this Country and Japan.

"We have carefully examined the Treaty referred to and find that there are no provisions in it which give to the petitioner any such right or privilege. As we construe the Treaty, it is one simply of commerce and navigation, and gives to the subjects of Japan the right of residence and travel, and the right to trade, etc., but no right is specifically given to carry on such a business as is contemplated by the application we are considering. But even if it were conceded that such a right or privilege is guaranteed by the Treaty, such right or privilege is still subject to and controlled by the laws which have been enacted, or which may be enacted under the general police powers of the State concerning proper police and sanitary regulations. The Treaty specially so provides; for it is said in the concluding portion of Article 2 of said Treaty as follows:

'It is, however, understood that the stipulations contained in this and the preceding Article do not in any way affect the laws, ordinances and regulations with regard to trade, the immigration of laborers, police and public security which are enforced or which may hereafter be enacted in either of the two countries.'

"We do not understand that the Japanese Government has at any time ever considered this Treaty so as to give American citizens such rights and privileges as are being demanded by the subjects of Japan. We do not think that the Japanese authorities would grant to an American subject the right to open an Intelligence Office as an absolute right under this Treaty in any of the localities in that Country.

"We are of the opinion that the Charter provision referred to is not in any way affected or controlled by any of the provisions of the Treaty.

"In exercising the powers entrusted to us by the Charter, we are of the opinion that the permit should not be granted and it is so ordered.

"This action of the Board will enable the applicant to apply to the Courts where a judicial determination can be had concerning his rights under the Treaty. This is the most orderly proceeding to be taken, and this Board will facilitate in every way any steps taken in that direction."

The application of K. Oda, 1721 Post Street, Yataro, Samejimo, 1908 Bush Street, D. B. Mukai, Sacramento St., O. T. Hatsumo, 1513 Geary Street; Tora Kichi Tamuri, 1612 Laguna St., and Aiziro Hori, 1748 Sutter St.; were also denied under the above ruling.

Respectfully,

THE BOARD OF POLICE COMMISSIONERS
By CHAS. F. SKELLY
Secretary.