

DEPARTMENT OF STATE,
WASHINGTON.

Aide Mémoire.

The Secretary of State regrets to hear that the action of the San Francisco Board of Police Commissioners upon the applications of six Japanese subjects for licenses to conduct intelligence offices was so delayed as to cause inconvenience. It is thought that such delay is attributable to the difficult and changing conditions determining decision and also to the reluctance of the Board of Police Commissioners in feeling compelled to deny the applications.

Upon learning of the refusal of licenses to a few Japanese subjects in San Francisco, the Government caused the matter to be duly investigated. The reports now received indicate that the Board of Police Commissioners of San Francisco deem it wise at this time to restrict the issuance of licenses of the kind in the case of foreigners generally, but that they hesitated to refuse the applications of these Japanese until a careful investigation had persuaded them that in so doing they would interfere with no treaty right.

In

SEP 26 1907
INDEX
1797/33/3
108

In refusing the licenses in question, the Board of Police Commissioners also expressed willingness to facilitate the judicial determination of any question of right which might exist.

In view of the present restriction upon the immigration of Japanese laborers, in which the Imperial Japanese Government is cooperating, it would be natural to suppose that the number of Japanese seeking employment at San Francisco would now be steadily decreasing. It would not be unnatural, therefore, if to meet this condition the local authorities should deem it proper not only not to increase but even to diminish the somewhat large number of intelligence offices hitherto run by, and it is understood exclusively for, Japanese.

As is known to His Excellency the Ambassador, Section VII, Chapter 4, Article VIII, of the Charter of the City and County of San Francisco provides that:

"The Chief of Police shall possess powers of general police inspection, supervision, and control over all pawnbrokers, peddlers, junk-shop keepers, dealers in second-hand merchandize, auctioneers, and intelligence office-keepers. All persons engaged in said callings must first procure permits from the Commissioners. * * *"

The growing tendency to restrict to American citizens the issuance of certain kinds of licenses may

may be inferred from the fact that on July 3, 1906, the Board of Supervisors of the City and County of San Francisco passed the following ordinance:

"No liquor license shall be issued to any person who is not a citizen of the United States and who has not been a resident of this City and County for at least one (1) year continuously next preceding the date of application for license,
* * * ."

Since the Ambassador does not find it clear that Article VIII of the Charter of San Francisco is consistent with the Constitution and Laws of the United States, the Secretary of State is glad to elucidate this point. The subject matter of the Section in question is one which lies entirely in the hands of the States. The discretion given in this instance to the Board of Police Commissioners is as absolutely applicable to American citizens as to Japanese or other foreigners. The authority to determine such questions, the regulations governing them, and the mode of exercising this authority may be different in each State, but they are in each State binding alike upon Americans and foreigners.

The Federal Government cannot in such a case interfere in behalf either of an American or of a foreigner in the exercise by the Board of Police Commissioners of the discretion lawfully vested in them. It must assume
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that this discretion will be exercised with intelligence, justice, and sincerity in the interests of the community whose mandate it holds. The Federal Government, will, however, be glad to make known to the Governor of California its hope that the local authorities will so far as consistent with public interest avoid undue harshness in the refusal of licenses to Japanese.

The Secretary of State is quite confident that the Ambassador and his Government fully realize the good disposition of this Government and its regret at the occasional occurrence of cases of this kind where there is a certain amount of hardship to a few individuals.

The Ambassador cites provisions of the treaty of 1894 as germane to the question under discussion. While from the foregoing it will be seen that Japanese subjects are in this instance but receiving national and favored nation treatment yet it may not be out of place, in an informal verbal communication, to advert to the fact that by the closing paragraph of Article II of the treaty of 1894 all "laws, ordinances and regulations with regard to trade, immigration of laborers, police and public security which are in force or may hereafter be enacted in either of the two countries" are specifically

removed from the perview of the preceding provisions of the Treaty, which extend to Americans in Japan and to Japanese in the United States national or favored nation treatment in various respects. It may be pointed out moreover that in the light of the whole context of the treaty the word "trade" as above used is especially well applicable to the petty business activities which are the subject of the San Francisco ordinances. The completeness of the reservation of Article II in the American-Japanese Treaty is emphasized by reference to the corresponding portion of the Japanese-Russian Treaty of 1895, where the corresponding limitation of favored nation treatment is restricted by the proviso that any laws, etc., regarding trade, police, etc., shall be applicable not only to the subjects of the Contracting Parties but also to all foreigners in general.