DEPARTMENT OF LABOR
Office of the Solicitor

LEGAL FIELD LETTER

NO. 24

SUBJECT: FORM AND CONTENT OF OPINIONS AND OPINION LETTERS.

In the interests of clarity and uniformity, opinions rendered by this office to the Secretary, bureau chiefs, and other administrative officers of the Department should conform to the following standards:

1. The topic of the memorandum should be stated above the opening line of the text and should mention the section of the statute and the section of the Code (or sections) construed as well as general descriptive material.

2. The first paragraph should make clear, by restatement, if necessary, the precise questions being considered in the memorandum.

3. The next paragraph or paragraphs should state the facts which occasion the question of law upon which an opinion is sought.

4. The next paragraph should state the conclusion reached.

5. The rest of the text should be devoted to the reasoning justifying the conclusion and a short closing paragraph summarizing the opinion.

6. It is important that citations to decisions and statutes be uniform, e.g.:

(a) Where a federal statute has a popular name or prescribed short title, that should be used in preference to the "Act of" form, e.g., Quota Act of May 26, 1924, 43 Stat. 153, 8 U.S.C. sec. 203.

(b) Once a new law has appeared either in the bound Statutes at Large or in the Code, it is no longer necessary to refer to it as Public No. 46 or as Joint Resolution 23, as the case may be.

(c) A citation to a federal case not in the Supreme Court should contain, in addition to the page and volume number of the Federal Reporter, a parenthetical reference

to the court before which it came and the date it was decided, e.g., (S.D.N.Y., 1926), (D. Mass., 1930), or (C.C.A. 3rd, 1937). The citations to the first series should be abbreviated as follows: 26 Fed. 323; to the second series, 19 F. (2d) 126. Names of the parties should always be underscored.

(d) Citations to Supreme Court cases should contain the date and the official volume of the United States Reports. It is not necessary to give the parallel citation in the Supreme Court Reporter or any other unofficial service unless the case has not as yet been published in the official advance sheets. In such instances the case may be cited No. 169, This Term, ___ Sup. Ct. ___.

(e) Whenever possible, citations to state courts should include the reference both to the official state reporter and the unofficial reporter of the West Publishing Company, e.g., 350 Mass. 126, 137 N.E. 345, and the date of the case.

(f) State laws should be cited by chapter and page number in the session laws unless there has been some codification subsequent to the adjournment of the legislature which enacted the particular statute.

7. The same suggestions with respect to stylo should be followed with respect to letters prepared in this office addressed to persons outside the Department. Unless an opinion letter is being prepared for the signature of a departmental, bureau or regional officer, the conclusion of the letter should read:

For the Solicitor

By_____
Rufus G. Poole
Assistant Solicitor
In Charge of Opinions and Review

the actual signature to be made by the Assistant Solicitor in Charge of Opinions and Review, or any attorney designated by him to perform such duties. Formal opinions prepared for the guidance of officers of the Department should be prepared for the signature of the Solicitor or Acting Solicitor. If the letter, however, expresses a new interpretation of any statute administered in the Department, or applies previous interpretations to novel or doubtful situations, it should be prepared for the signature of the Solicitor.

8. A copy of a model opinion is attached hereto for the guidance of the stenographic staff.

GERARD D. REILLY
Solicitor of Labor

Attachment.
Issued 8/16/40

(5279)

DEPARTMENT OF LABOR
Office of the Solicitor
Washington

COPY

September 29, 1939

MEMORANDUM TO THE COMMISSIONER OF IMMIGRATION AND NATURALIZATION

Re: Immigration - Neutrality - Admission of soldiers of a belligerent power - sec. 3 of Act of Feb. 5, 1917, 8 U.S.C. sec. 136, sec. 3(3) of Act of May 26, 1924 (id., sec. 203(3) - Executive Orders 8029 and 8233, Proclamation 2359.

You have asked my opinion as to whether or not a detachment of Canadian soldiers may be admitted to the United States for the purpose of traveling from one point in Canada to another in view of the Government's proclamation of neutrality with respect to the state of war now existing between the Dominion of Canada and Germany.

This inquiry is occasioned by a letter received from an inspector-in-charge at a border station of the Immigration and Naturalization Service. The writer states that he has been requested by a Canadian divisional commander to permit a battalion of infantry to travel from a cantonment in the west to a cantonment in Ontario in a railroad train which crosses the international boundary before reaching its destination. It is represented that the troops will not leave the train at any stations in the United States. None of the soldiers are in possession of consular visas.

It appears that two questions are involved, (1) whether or not it is contrary to the laws and treaties of the United States to permit the troops of a belligerent nation to cross its territory in continuous transit from one border point to another, (2) assuming that such crossing is illegal, whether or not the Department has any duty with respect thereto.

In my opinion the admission of these troops would be contrary to the neutrality laws and treaties. I am also of the opinion that it is within the province of the Department to exclude them.

It is well settled that even crossing the United States in continuous transit from one point of contiguous territory to another is an entry within the meaning of the immigration laws. See Jackson v. Zurbrick, 59 F(2d) 937 (C.C.A. 7th, 1932); Kahan v. Carr, 47 F.(2d) 604 (C.C.A. 9th, 1931), cert. den., 283 U.S. 862 (1931); Ex parte Piazzola, 18 F.(2d) 114 (S.D.N.Y., 1926). Even though the proposed entry therefore falls within the jurisdiction of the Department, my conclusion is not based upon anything in the immigration statutes. In other words, there is nothing in

(5279)

the facts stated which would bring any of the aliens within the excludable classes enumerated in section 3 of the Immigration Act of February 5, 1917, as amended, 39 Stat. 874, 8 U.S.C. sec. 136.

Moreover, since they are Canadian nationals the lack of documentation is immaterial. Section 3(3) of the Quota Act of May 26, 1924, 43 Stat. 153, 8 U.S.C. sec. 203, relieves aliens in continuous transit from the necessity of having an immigration visa and under the regulations issued pursuant to paragraph 1(a) of Executive Order of December 27, 1938 (No. 8029) persons domiciled in the Western Hemisphere countries are not required to have passports or other official documents.

I am of the opinion, however, that the foregoing Executive order and the immigration regulations issued pursuant thereto have been superseded insofar as Canadian armed forces are concerned by the President's proclamation of September 11, 1939 (No. 2359) declaring the neutrality of the United States with respect to the state of war existing between Germany and Canada. This proclamation with respect to those two powers incorporates by reference all the provisions of the proclamation of September 5, 1939 (No. 2357) relating to the neutrality of the United States in a war between Germany, France, Poland, and other powers.

This latter proclamation was supplemented by an Executive order issued the same date (No. 8233, 4 F.R. 3822) which recites inter alia that under the treaties of the United States and the law of nations it is the duty of this Government, in any war where the United States is a neutral, not to permit the commission of unneutral acts within its jurisdiction.

Specific duties in enforcing this general statement of neutrality are then placed upon the Departments of War, Navy, Treasury and Commerce. Section 6 then places upon all departments and independent establishments "enforcement of neutrality in connection with their own activities."

The Hague Convention of October 18, 1907 was ratified by the Senate on March 10, 1908 and proclaimed the law of the land on February 28, 1910 (36 Stat. 2310, 2322). There has never been any implementing legislation to carry out all the terms of this treaty but the courts have held that no legislation is necessary to render it effective, Ex parte Toscano, 208 Fed. 938 (S.D.Calif., 1913). This was a case in which writs of habeas corpus were sued out in behalf of a group of Mexican soldiers engaging in a civil war in that Republic. They had crossed the American border and had been interned. The court denied the application basing its decision upon two articles of the Hague Convention, supra, which seem to be applicable to the question now presented.

> ARTICLE 2. Belligerents are forbidden to move troops or convoys of war or supplies across the territory of a neutral Power.

ARTICLE 11. A neutral Power which receives on its territory troops belonging to the belligerent armies shall intern them, as far as possible, at a distance from the theatre of war . . . .

It therefore appears that it would be an unneutral act for Canada to send troops across the borders of the United States and should these troops enter, the Government under the obligations undertaken by the Hague Convention would have a duty to intern them.

I do not mean to suggest by this that if Canadian troops should enter the United States that the Immigration Service necessarily should take them into custody but since the Department of Labor, like other federal departments, has a duty to enforce the neutrality laws, it may properly apply its exclusionary powers under the immigration laws to prevent Canada from committing an act which technically contravenes the proclamation of American neutrality.

I should add that this opinion does not mean that the Department has a duty to prevent persons crossing the Canadian frontier to enlist, since article 6 of the Hague Convention relieves neutral powers of the duty of interfering with such activities.

GERARD D. REILLY
Solicitor of Labor