

ELECTIONS:
CIVIL RIGHTS:
CONVICTS:
INTERMEDIATE REFORMATORY:

Person released from Intermediate reformatory by Governor's commutation in 1940 may have right to vote restored only by pardon; may not serve as juror until pardoned, if convicted of crimes listed in Sections 557.490, 559.470, 561.340, or if over twenty convicted of crimes listed in Section 560.160;

may not hold office of honor, trust, or profit if convicted of crimes listed in Sections 557.490, 558.130, 559.470, 561.340 and 564.710; or if over twenty years of age and convicted of one of the crimes listed in Section 560.610, unless he receives a pardon.

June 8, 1954

Honorable Donald W. Bunker
Executive Secretary
Board of Probation and Parole
Jefferson City, Missouri



Dear Sir:

This is in answer to your letter of recent date, requesting an official opinion of this office, reading as follows:

"The Board of Probation and Parole would appreciate your opinion relative to the following question pertaining to Section 9086 RSMo 1939, which is the 3/4ths Rule and provides for automatic restoration of civil rights in certain cases of penitentiary convicts; and Section 217.370 RSMo 1949, which is a revision of the 1939 Section extending the 3/4ths Rule and automatic restoration of civil rights in certain cases of convicts confined in the intermediate reformatory.

"May the civil disabilities of a former convict released from the intermediate reformatory via commutation of sentence signed by the Governor in 1940 be removed only on order of the Governor?"

Section 217.740 RSMo 1949, provides as follows:

"If any male person seventeen years of age and less than twenty-five years of age be convicted of a felony for the first time, and he be not guilty of treason or murder in the first or second degree, or any offense for which capital punishment is provided, the court trying such person may sentence him to the custody of the officials of the intermediate reformatory to be confined at said reformatory for the term prescribed by the statutes of this state and fixed by the court or jury as a punishment for such offense. It shall

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be the duty of the officials in charge of said reformatory to receive all such convicted persons."

The Supreme Court of Missouri in the case of Anthony v. Kaiser, 169 S. W. (2d) 47, discussed the question of whether a person sentenced to the intermediate reformatory at Algoa was sentenced to the penitentiary within the meaning of Section 222.010 RSMo 1949, which section provides as follows:

"A sentence of imprisonment in the penitentiary for a term less than life suspends all civil rights of the persons so sentenced during the term thereof, and forfeits all public offices and trust, authority and power; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead."

With reference to this the court said at l.c. 48:

"The statute appeared in its present form as Section 1668 of the Revised Statutes of 1879, and has ever since remained unchanged. It is one of three sections which comprise Article 1 of Chapter 49 R. S. '39. Mo. R.S.A. art. 1. c.49. The article is captioned 'Civil Rights of Convicts.' Section 9225, which immediately precedes the one in question, specifies the effect upon civil rights flowing from a 'sentence of imprisonment in the penitentiary.' Article II of the same chapter in relation to 'Estates of Convicts' is similarly restricted to those instances where 'sentence of imprisonment in the penitentiary' has been imposed. Kansas Statutes with reference to the forfeiture or suspension of civil rights of convicts, and which bear a strong analogy to the foregoing were held by the Supreme Court of that state to be inapplicable to one sentenced to the State Industrial Reformatory upon conviction for rape; the court saying, "The judgment pronounced against him was simply "that he be sent to the state industrial reformatory at Hutchinson, Kan." His civil rights were not, therefore forfeited.* * *"

Therefore, such section has no application to a convict who was sentenced to the intermediate reformatory and released therefrom by commutation of the Governor.

Since Section 9086 RSMo 1939 refers only to persons sentenced to the penitentiary, and since the person about whom you write was released by reason of the commutation and not under the three-

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fourths Rule, said section has no bearing on this matter.

Section 217.370 RSMo 1949, referred to in your letter, provides as follows:

"Any convict who is now or may hereafter be confined in the penitentiary or the intermediate reformatory and who shall serve three-fourths of the time for which he or she may have been sentenced, in an orderly and peaceable manner, without having any infraction of the rules of the institution or laws of the same recorded against such convict, shall be discharged in the same manner as if said convict had served full time for which sentenced, and in such case no pardon from the governor shall be required; and in all cases of first conviction of felony the civil disabilities incurred thereby shall cease at the end of two years from such discharge under the three-fourths rule, and such convict shall thereupon be restored to all the rights of citizenship; provided, that he or she shall not have been indicted, informed against by the prosecuting or circuit attorney, or convicted of any other crime, during such period, and shall obtain a certificate to that effect from the board of probation and parole, whose duty it shall be, upon proper showing, to issue the same and keep a record thereof."

The provisions of such section, relative to restoration of citizenship to persons released from the intermediate reformatory, are taken from Section 9120a, L. Mo. 1943, p.775. Since Section 9120a was enacted after the commutation in 1940, and since the person about whom you write, was released by reason of the commutation and not under the three-fourths Rule, Section 217.370 RSMo 1949 has no application to this matter.

We are enclosing an official opinion of this office rendered under date of April 19, 1954, to Clifford Jones, which holds that a commutation by the Governor does not have the effect of a pardon by the Governor.

Section 111.060 RSMo 1949, provides as follows:

"All citizens of the United States, including residents of soldiers' and sailors' homes, over the age of twenty-one years who have resided in this state one year, and the county, city or town sixty days immediately preceding the election at which they offer to vote, and no other person shall

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be entitled to vote at all elections by the people. Each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides. No idiot, no insane person and no person while kept in any poorhouse at public expense or while confined in any public prison shall be entitled to vote at any election under the laws of this state; nor shall any person convicted of a felony, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting."

As is pointed out in the attached opinion, the right to vote of a person convicted of a felony is not restored by a commutation. Therefore, the person who received a commutation in 1940 from his sentence to the intermediate reformatory cannot vote at any election until he receives a pardon.

Section 557.490 RSMo 1949, provides as follows:

"Every person who shall be convicted of any perjury or subornation of perjury, punishable by any of the provisions of this chapter, shall thereafter be incompetent to serve as a juror in any cause, civil or criminal, and shall be disqualified from voting at any election, or holding any office of honor, profit or trust within this state."

If the person who received the commutation in 1940 was convicted of the crime of perjury or subornation of perjury, punishable by any of the provisions of Chapter 557 RSMo 1949, his right to serve as a juror, or hold an office of honor, trust or profit within the state, could be restored only by a pardon.

Section 558.130 RSMo 1949, provides as follows:

"Every person who shall be convicted of any of the offenses mentioned in sections 558.010 to 558.120 shall be forever disqualified from holding any office of honor, trust or profit under the constitution and laws of this state, and from voting at any election; and every officer who shall be convicted of any official misdemeanor or misconduct in office, or of any offense which is by this or any other statute punishable by disqualification to hold office, shall, in addition to the other punishment prescribed for such offenses, forfeit his office."

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If the person who received the commutation in 1940 was sentenced to the intermediate reformatory for one of the offenses mentioned in Sections 558.010 to 558.120 he cannot hold any office of honor, trust or profit under the Constitutional laws of this state until he receives a pardon.

Section 559.470 RSMo 1949, provides as follows:

"Every person who shall be convicted of murder in either degree, or manslaughter as designated in sections 559.070, 559.080 or 559.090, or who shall be convicted and sentenced to the penitentiary for any of the offenses specified in sections 559.150, 559.180, 559.200, 559.260 to 559.290, 559.310, 559.320 and 563.060 RSMo 1949, shall be forever disqualified from voting at any election, or holding any office of honor, trust or profit under the laws of this state, or of any city or town thereof, or sitting as a juror in any case."

If the person who received the commutation in 1940 was sentenced to the intermediate reformatory for any of the causes listed in Section 559.470, his right to sit as a juror, or hold any office of honor, trust or profit in this state, or any city or town thereof, can be restored only by a pardon.

Section 560.610 RSMo 1949, provides as follows:

"Any person who shall be convicted of arson, burglary, robbery or grand larceny, or who shall be sentenced to imprisonment in the penitentiary for any other crime punishable under the provisions of this chapter, shall be incompetent to serve as a juror in any cause, and shall be forever disqualified from voting at any election or holding any office of honor, trust or profit, within this state; provided, that the provisions of this section shall not apply to any person who at the time of his conviction shall be under the age of twenty years; provided further, that in all cases where persons have been convicted under this chapter the disqualification provided may be removed by the pardon of the governor any time after one year from the date of conviction."

If, therefore, the person who received a commutation in 1940 was twenty or over, and he was sentenced to the intermediate reformatory for one of the crimes listed in Section 560.610, his right to serve as a juror, or hold an office of honor, trust or profit within this state, can be restored only by a pardon.

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Section 561.340 RSMo 1949, provides as follows:

"Every person who shall be convicted of any felony punishable by the provisions of sections 561.010 to 561.360 shall be incompetent to be sworn as a juror, and forever disqualified from voting at any election, or holding any office of honor, trust or profit within this state."

If the person who received the commutation in 1940 was sentenced to the intermediate reformatory because he was convicted of a felony, punishable by the provisions of Sections 561.010 to 561.360, his right to sit as a juror or hold any office of honor, trust or profit within this state, can be restored only by pardon.

Section 564.710 RSMo 1949, provides as follows:

"Every person who shall be convicted of any felony, punishable under any of the provisions of this chapter, shall be thereafter disqualified from holding any office of honor, profit or trust, or of voting at any election within this state."

If the person who received the commutation in 1940 was convicted of a felony, punishable under the provisions of Chapter 564 RSMo 1949, his right to hold any office of honor, profit or trust can be restored only by pardon.

CONCLUSION

It is the opinion of this office that a person who was sentenced to the intermediate reformatory of Missouri and released therefrom by the Governor's commutation in 1940 cannot vote at any election until he receives a pardon from the Governor.

It is the further opinion of this office that such person cannot serve as a juror if he was sentenced to the reformatory because of being convicted of the crimes listed in Sections 557.490, 559.470, 561.340 or if he was over twenty years of age at the time of conviction of commission of one of the crimes listed in Section 560.610, until he receives a pardon from the Governor.

It is the further opinion of this office that such person cannot hold any office of honor, trust or profit, if he was con-

