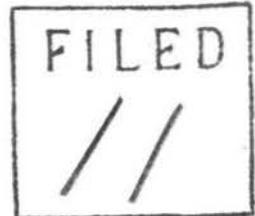


ELECTIONS: Conviction for felony disqualifies voter until full pardon is granted, except as to persons sentenced to Intermediate Reformatory and disqualified under Section 9120a, Mo. Stat. Ann. (Laws of 1943), or restored to citizenship under Sections 4188, 4210, 4561, 9086 or 9227, R. S. Mo. 1939.

September 6, 1945



Honorable D. W. Breid
Prosecuting Attorney
Union, Missouri

Dear Sir:

We acknowledge receipt of your letter under date of August 16, 1945, requesting an official opinion from this department, which reads as follows:

"John Doe was charged under paragraph 'G', Section 4900, with selling intoxicating liquor without a license.

"Defendant enters a plea of guilty and a fine of \$100.00 and costs was assessed against him.

"Under this conviction, does defendant forfeit his rights to vote at any election?"

Section 2, Article VIII, of the Constitution of Missouri of 1945, provides as follows:

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

elections by the people; provided, no idiot, no insane person and no person while kept in any poor house at public expense or while confined in any public prison shall be entitled to vote, and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting."

We call your attention to that portion of Section 11469, R.S.A. Mo., as amended in 1943, relating to the qualifications of voters, which is as follows:

"* * * nor shall any person convicted of a felony or other infamous crime, 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 other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting."

Section 4900, par. (g), R.S.A. Mo., provides as follows:

"Any person who shall sell in this state any intoxicating liquor without first having procured a license from the supervisor of liquor control, authorizing him to sell such intoxicating liquor shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for a term of not less than two years nor more than five years, or by imprisonment in the county jail, for a term of not less than three months nor more than one year, or by a

fine of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars, or by both such fine and imprisonment."

Under the provisions of the above section the conviction for selling intoxicating liquor without a license is made a felony by the laws of the state of Missouri.

Judge Ellison, in his concurring opinion in State v. Sartorius, 175 S. W. (2d) 787, we believe correctly construes Section 2, Art. VIII of the Constitution and Section 11469, R. S. A., as follows:

"I respectfully submit that the proper construction of Section 2, Article 8 of the Constitution and Section 11469 is that the voter to be disqualified must have been convicted of a felony in this state or of a felony in another jurisdiction which would also be a felony if it had been committed in Missouri. * * * * *"

It appears then, that upon the conviction of any felony in the state of Missouri the person is disqualified from the privilege of voting until this disqualification is removed.

The disqualifications from the privilege of voting may be removed under the provisions of the following sections:

"Sec. 4188. Pardon.--In all cases in which the governor is authorized by the Constitution to grant pardons, he may grant the same, with such conditions and under such restrictions as he may think proper."

"Sec. 4210. Final discharge--citizenship restored.--Any person who shall receive his final discharge under the provisions of sections 4199 to 4211, inclusive, shall be restored to all the rights and privileges of citizenship."

"Sec. 4561. Conviction in what cases forfeits citizenship.--Any person who shall be convicted of arson, burglary, robbery or larceny, in any degree, in this article specified, or who shall be sentenced to imprisonment in the penitentiary for any other crime punishable under the provisions of this article, 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 article the disqualification provided may be removed by the pardon of the governor any time after one year from the date of conviction."

"Sec. 9120a. Discharge of inmates from Intermediate Reformatory for Young Men. Any inmate who is now or may hereafter be confined in the Intermediate Reformatory for Young Men, and who shall serve three-fourths of the time for which he may have been sentenced, in an orderly and peaceable manner, without having any infraction of the rules of the reformatory or laws of the same recorded against such inmate, shall be discharged in the same manner as if said inmate had served the full time for which sentenced, and in such case no pardon from the Governor shall be required; civil disabilities incurred by conviction of felony shall cease at the end of two years from such discharge under the three-fourths rule, and such inmate shall thereupon be restored to all the rights of citizenship: Provided, that he shall not have been indicted, informed against by the prosecuting attorney 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."

"Sec. 9086. Three-fourths rule--who eligible, etc.--Any convict who is now or may hereafter be confined in the penitentiary, 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 prison or laws of the same recorded against such convict, shall be discharged in the same manner as if said convict had served the 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 commission, whose duty it shall be, upon proper showing, to issue the same and keep a record thereof."

"Sec. 9227. Pardon, effect of.--When any person shall be sentenced upon a conviction for any offense, and is thereby, according to the provisions of this article, disqualified to be sworn as a witness or juror in any cause, or to vote at any election, or to hold any office of honor, profit or trust within this state, such disabilities may be removed by a pardon by the governor, and not otherwise, except in the case in the next section mentioned."

Referring to Section 9227, supra, the proviso "except in the case in the next section mentioned," should not be considered in construing the above section for the reason that the "next section" referred to in the above section was Section 12971, R. S. Mo. 1929, and was repealed by Laws of 1939, page 279.

In the above quoted sections, providing for the restoration of citizenship and the subsequent removal of the disqualifications to vote, Section 9086 appears to be in conflict with the provisions of Section 9227. However, Section 9227 is taken from R. S. 1835, p. 214, and Section 9086 was taken from the Laws of 1917, p. 155. It is a general rule of statutory construction that where an irreconcilable conflict exists between the provisions of one statute with another, the last will stand and the other, which cannot stand with it, is of no effect. *City of Westport v. Jackson*, 69 Mo. App. 148.

It has been held that the pardoning power belongs exclusively to the executive department of the government, and can not be exercised by the legislative department. *State v. Sloss*, 25 Mo. 291; *State v. Todd*, 26 Mo. 175. However, under the provisions of Section 2, Art. VIII of the Constitution of Missouri of 1945, supra, we find that the legislature may exclude persons convicted of felony, or a crime connected with the right of suffrage from the privilege of voting, and, certainly, if the legislature possesses the discretionary power of enacting legislation taking away the privilege of voting, it may enact legislation to restore this privilege that it has previously taken away.

CONCLUSION

Therefore, it is the opinion of this department that (1) a person is disqualified as a voter in the state of Missouri when he has been convicted of a felony in this state, or of a felony in another jurisdiction which would also be a felony if committed in Missouri, and has not been pardoned for such offense; (2) however, a pardon would not be required of persons whose citizenship has been restored under the provisions of Sections 4210, 4561, 9086, R. S. Mo. 1939, and 9120a R.S.A., Laws of 1943.

Respectfully submitted,

APPROVED:

A. V. OWSLEY
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J. E. TAYLOR
Attorney General

AVO:CP