

QUALIFICATION OF VOTERS: A voter, upon suspension of the imposition
VOTERS: of a sentence, is not disqualified from
CONVICTION OF FELONY: registering and/or voting, if otherwise
SENTENCES: qualified.

OPINION NO. 518

December 6, 1966

Board of Election Commissioners
of Kansas City, Missouri
1331 Locust Street
Kansas City, Missouri 64106

Attention: Mr. Fred A. Murdock

Gentlemen:



This opinion responds to your request whether the judgment and order of probation entered February 19, 1965, by the United States District Court for the Western District of Missouri in the case of U. S. v. Canaday is a conviction of a felony within the meaning of Section 111.060; 117.040 and 117.400 RSMo. 1959.

The judgment of the court in this case reads as follows:

"It is adjudged that the defendant is guilty as charged and convicted.

"It is adjudged that imposition of sentence of imprisonment is suspended and the defendant is placed on probation for a period of three (3) years on each of counts 3 and 4, to be served concurrently with each other, under the general conditions of probation adopted by the Court, which will be communicated to the defendant orally and in writing by the U.S. Probation Office. No costs assessed."

A brief review of the pertinent constitutional and statutory provisions is necessary in order to lay a basic understanding for the resolution of this question. The sections involved in pertinent parts are: Article VIII, Section 2, Missouri Constitution 1945:

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"All citizens of the United States, 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, are entitled to vote at all elections by the people.

* * * * *

"No person 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."

Section 111.060 RSMo, 1959 reads in pertinent parts 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 be entitled to vote at all elections by the people.
* * * 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; * * *"

Section 117.040, RSMo 1959, reads in pertinent parts as follows:

"Every citizen of the United States over the age of twenty-one years, including occupants of soldiers' and sailors' homes, who has resided in the state one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city

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where such election is held, who has not been convicted of a felony, * * * shall be entitled to vote at such election for all officers, state or municipal, made elective by the people, or at other elections held in pursuance of the laws of the state. * * *"

Section 117.400, RSMo 1959, reads as follows:

"It shall be the duty of the board upon receipt of the reports of deceased persons and persons convicted of felony or of a crime connected with the exercise of the right of suffrage to forthwith cancel the registration of all such persons, but such board shall make a notation on the registration record showing the date and cause of such cancellation."

If, indeed, this is a conviction under the state law of Missouri, the elector would be disqualified, Cf. State v. Sartorius, 175 S.W.2d 787.

The issues are succinctly stated by the Court of Appeals of Maryland (1949) in the case of Hunter v. State, 69 Atlantic 2d 505, 509 where the court said:

"The appellant also contends that there had been no prior conviction, because in Case No. 19 no sentence had been imposed and that the word 'conviction' includes both verdict and sentence. Investigation into this question discloses a divergence of opinion throughout the country on the subject. In this State, there is one case which discusses the meaning of the word, Francis v. Weaver, 76 Md. 457, 25 A.413, 415. In that case the court was not considering the testimony of a conviction to impeach a witness, but the meaning of the word as used in a statute. It said 'The phraseology of the statute (1812 C.78, §26, November Session), is somewhat misleading, and the use made of

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the word 'convicted' is largely the cause of the trouble. 'In common parlance, no doubt it (convicted) is taken to mean the verdict at the time of trial, but in strict legal sense it is used to denote the judgment of the court.' Tindal, C.J., in Burgess v. Boctefeur, * * * 7 Man. & G. 504; Smith v. Com., 14 Serg. & R. [Pa.] 69; Blaufus v. People, 69 N.Y. 107, 25 Am. Rep. 148. The word 'conviction' is undoubtedly verbum aequivocum, but we think the meaning given to it by Chief Justice Tindal is the one proper to be applied here.' The majority of the decisions throughout the country seem to agree that conviction includes not only the verdict of a jury, but the imposition of a sentence or judgment. Such cases are State v. Burnett, 144 Wash. 598, 258 P.484; Martin v. State, 30 Okl.Cr. 49, 234 P.795; Commonwealth ex rel Arnold v. Ashe, 156 Pa. Super, 451, 40 A.2d 875; Broughton v. State, 148 Tex Cr. R. 445, 188 S.W.2d 393; Thomas v. U.S., 74 App.D.C. 167, 121 F.2d 905; Smith v. State, 75 Fla. 468, 78 So. 530; State v. Spurr, 100 W.Va. 121, 130 S.E. 81; Crawford v. U.S., 59 App.D.C. 356, 41 F.2d 979; State v. Roybal, 33 N.M. 540, 273 P.919; In re Ringnalda, D.C.Cal., 48 F.Supp., 975; City of Boston v. Santosuosso, 307 Mass. 302, 30 N.E.2d 278; Campbell v. U.S., D.C.Cir., 176 F.2d 45."

It is interesting to note that the Federal rule is stated by the U. S. District Court (S. D. California in 1943) in the case of In re Ringnalda 48 F.Supp., 975, 977, where the court said:

"This conclusion accords with the general view, which obtains also in federal courts, that when we speak of a 'conviction' from which disabilities flow, we refer to a conviction followed by the imposition of a sentence, which is the judgment in a criminal case. And where imposition of

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the sentence is stayed, there is no final judgment. See: *Berman v. United States*, 1937, 302 U.S.211, 58 S.Ct. 164, 82 L.Ed. 204; *Crawford v. United States*, 1930, 59 App.D.C. 356, 41 F.2d 979; *In re Phillips*, 1941, 17 Cal.2d 55, 58, 109 P.2d 344, 132 A.L.R. 644. Thus courts have held that before there can be a denial of the right to vote (*People v. Fabian*, 1908, 192 N.Y. 443, 85 N.E. 672, 18 L.R.A., N.S. 684, 27 Am. St. Rep. 917, 15 Ann.Cas.100), deprivation of a license to practice a profession (*Donnell v. Board of Registration of Medicine*, 1930, 128 Me. 523, 149 A.153), or impeachment of a witness (*People v. Mackay*, supra, *Crawford v. United States*, supra, *Dial v. Commonwealth*, 1911, 142 Ky. 32, 133 S.W. 976; *Attorney General v. Pelletier*, 1928, 240 Mass. 264, 134 N.E. 407; *State v. Roybal*, 1928, 33 N.M. 540, 273 P.919; *State v. Spurr*, 1925, 100 W.Va. 121, 130 S.E.81) or other penalties, (*State v. Pishner*, 1914, 73 W.Va. 744, 81 S.E. 1046, 52 L.R.A. N.S., 369; *State v. Savage*, 1920, 86 W.Va. 655; 104 S.E. 153; *State ex rel. Blake v. Levi*, 1930, 109 W.Va. 277, 153 S.E. 587) by reason of conviction of an offense, the conviction or plea of guilty must be followed by the actual imposition of a sentence, i.e., final judgment. See note, 12 So.Cal.Law Rev. 1939, 201. So that, when the Superior Court failed to impose any sentence in this case, and, after the expiration of the probationary period caused the verdict of 'guilty' to be changed to one of 'not guilty', and dismissed the proceeding, there was no conviction of an offense involving moral turpitude affecting the character of the petitioner, upon which the Government can now ground its objection to admission to citizenship. See *Suspension of Hickman*, 1941, 18 Cal.2d 71, 113 P.2d 1; *Sherry v. Ingels*, 1939, 34 Cal.App.2d 632, 633, 94 P.2d 77."

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The Kansas City Court of Appeals in Meyer v. Real Estate Commission, 183 S.W.2d 342, said:

"The statutes providing for suspension of sentence and probation are said to be remedial and hence are to be liberally construed.' 24 C.J.S., Criminal Law, § 1571, p. 55.

* * * * *

"The evidence shows that the business of plaintiff herein is that of a real estate broker, and it would appear that to deprive him of his occupation might well shut the door of opportunity against him and impede, if not prevent, his restoration to society as a good social risk. In cases where the defendant is put upon probation the federal court, no doubt, finds that there are circumstances surrounding the life of the defendant to lead it to believe that he will be a good risk for reformation. If this is true it appears to us that his future should not be clouded by depriving him of his occupation. Consequently, having in mind the beneficent purposes of the Federal Act we are of the opinion that it was not intended by Congress that a suspension of imposition of sentence and placing of defendant on probation should be construed to be a final judgment of conviction in the case such as to work injury to him in another proceeding. It might be further observed that while the probationary period is running in these cases it may appear to the federal court that the best interests of the public and the defendant would be served by modifying the conditions of the probation, as for instance, changing the period, *Scalia v. United States*, 1 Cir., 62 F.2d 220, or defendant may be discharged altogether from supervision and the proceedings terminated against him as provided by sections 724, 725 of the Federal Statute, or, the court may see fit, in order to remove the stain, as far as possible, of

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the record made in the case against plaintiff, to dismiss the proceedings against him entirely.

"Since such statutes (providing for the suspension of sentence and placing accused on probation after a plea or verdict of guilty) look to the reformation and not to a final goal of punishment, where the object of probation seems to the court to have been accomplished in such a way as not to require the punishment of accused, the court may dispose of the case finally by a dismissal thereof, even though the statute does not specifically authorize such action.' 24 C.J.S., Criminal Law, § 1571, p. 53; 16 C.J. p. 1289. See, also, Marks v. Wentworth, 199 Mass. 44, 85 N.E. 81.

"As long as it is within the province of the federal court to dismiss the criminal proceedings against the plaintiff herein, it can hardly be said that there has been a final judgment of conviction.

* * * * *

"However, where the reference is to the ascertainment of guilt in another proceeding (as here), and the question as to its bearing upon the status or rights of the individual in a subsequent case is under consideration, a broader meaning is to be attached to the word 'conviction', and a person is not deemed to have been convicted unless it is shown that a judgment is pronounced upon a verdict or plea of guilty. * * *"

Accordingly, this office concludes that the elector in this case, under the judgment of the court, where the imposition of sentence was suspended, has not been convicted within the meaning of the statutes so as to be disqualified from registering and voting, if otherwise qualified.

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CONCLUSION

It is the conclusion of this office that where the imposition of sentence is suspended, the elector is not disqualified under the statutes from registering and/or voting, if otherwise qualified.

The foregoing opinion which I hereby approve was prepared by my assistant, Richard C. Ashby.

Yours very truly,


NORMAN H. ANDERSON
Attorney General