

CONVICTS: Status of a person with legal residence in Missouri who has been convicted and sentenced in a United States District Court for a felony.

January 23, 1935.

FILED  
79

Honorable Alfred L. Rottman  
Chief Assistant  
Board of Election Commissioners  
St. Louis, Missouri

Dear Sir:

This department is in receipt of your letter of recent date wherein you state in part as follows:

"Will you please advise me what is the status with respect to civil rights of a person with legal residence in Missouri, who has been convicted and sentenced in the United States District Court for committing a felony.

"I am aware of the disqualifications in the case of a person who is sentenced in the state courts as a state felon, but would like definite information in the case of a Federal felon."

Section 12968 provides:

"A sentence of imprisonment in the penitentiary for a term less than life suspends all civil rights of the person 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."

In the case of Presbury v. Hull, 34 Mo. 29, the defendant was convicted in the United States District Court for the District of Missouri of a felony and sentenced to the penitentiary. While serving his sentence his business partner, the respondent, agreed

with him to dissolve the partnership, and the defendant signed a bond protecting the respondent against any claims that might arise against their business. Upon a suit on the bond against Hull who acted as security, Hull set up the defense that the bond was void in that the law imparted notice to the respondent that Wolff, the defendant, was incapacitated to make a contract concerning the closing up of the partnership. The Court in its opinion said:

"The transcript of the record of the conviction of Wolff of a crime, and judgment thereon, by the Circuit Court of the United States for the Missouri district were properly rejected.

"The statute of Missouri, which enacts that a sentence of imprisonment in the penitentiary for a term of less than life, suspends all civil rights of the person so sentenced during the term thereof, applies only to sentences in the State courts."

In the case of Ward v. Morton, 294 Mo. 408, 1. c. 417, the Court in its opinion said:

"Plaintiff contends that the court erred in finding for defendant, for the reason that the judgment rendered in the tax suit of Pierce, Collector, against plaintiff and others, and the deed from plaintiff and others to Dorothy McLarty, are both void, because plaintiff was under sentence to the penitentiary at the time said judgment was rendered and said deed was made.

"In support of the contention urged, plaintiff cites Section 2291, Revised Statutes 1919, which provides that '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,' etc. Plaintiff also cites *Williams v. Shackelford*, 97 Mo. 322, which holds that a mortgage executed by a convict while in the penitentiary is void; *McLaughlin v. McLaughlin*, 228 Mo. 635, which rules that in a divorce suit by a wife against her husband who is confined in the penitentiary, no valid decree can be entered investing the wife with title to the husband's real estate unless the husband is represented in court by a trustee; and *Murphy v. Barron*, 275 Mo. 282, which holds that a judgment for taxes obtained against an owner of land incarcerated in the penitentiary is void and a sale under execution does not affect the legal title.

"In all of the cases cited by plaintiff the person whose property was affected was actually confined in the penitentiary at the time the judgment was rendered or the conveyance was executed. The underlying reason upon which each of the adjudications was predicated was that, while in custody, a convict is prevented from attending to his affairs and the statute has therefore provided a method by which his property may be protected and preserved. This method finds expression in Section 2297, Revised Statutes 1919, which provides for the appointment of a trustee to care for the estate of the convict while incarcerated. Subsequent sections define the powers and duties of the trustee."

From the foregoing we are of the opinion that such civil rights, as executing a mortgage and making a contract are not suspended in Missouri by reason of the fact that a man has been convicted and sentenced in the

United States District Court for committing a felony, but they are only suspended if he be convicted, sentenced and confined in the penitentiary by the State courts.

Article VIII, Section 2, page 122, of the Missouri Constitution provides in part as follows:

"\* \* \* \*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 the right of voting."

Section 10178, R. S. Mo. 1929, provides the qualification of voters and reads in part as follows:

"\* \* \* \*no person\* \* \* \*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 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 4471, R. S. Mo. 1929, defines the term "felony," thus:

"The term 'felony,' when used in this or any other statute, shall be construed to mean any offense for which the offender, on conviction, shall be liable by law to be punished with death or imprisonment in the penitentiary, and no other."

Section 4472, R. S. Mo. 1929, defines the term "infamous crime" thus:

"Whenever the term 'infamous crime' is used in this or any other statute, it shall be construed as including every offense for which the offender, on conviction or sentence, is declared to be disqualified or rendered incompetent to be a witness or juror, or to vote at any election or to hold any office of honor, profit or trust within this state."

Section 4473, R. S. Mo. 1929, defines the term "misdemeanor" thus:

"The term 'misdemeanor,' as used in this or any other statute, shall be construed as including every offense punishable only by fine or imprisonment in a county jail, or both."

From the foregoing we are of the opinion that unless a man has been granted a full pardon from a conviction for the commission of a felony, his right of suffrage is suspended, and that the same applies if he be convicted in a Federal District Court, and further, if there be a further conviction, he is forever excluded from voting in Missouri.

Section 3928, R. S. Mo. 1929, provides that a conviction for perjury forfeits citizenship, including the right to serve as juror in any cause, both criminal and civil, and the right to hold any office of honor, profit or trust within this State.

Section 4035, R. S. Mo. 1929, provides that every person who shall be convicted of murder in either degree, or manslaughter in the first degree, rape, carnally knowing a woman above fourteen years, forcing a woman to marry, taking away a female under fourteen years of age, enticing a female to a house of ill fame, seduction, guardian defiling a ward, mayhem, assault with intent to kill, and poisoning, forfeits citizenship which includes the right to serve as a juror and hold office.

Section 4172, R. S. Mo. 1929, provides the above disqualifications for arson, burglary, robbery, larceny in any degree, and numerous other felonies.

Section 4212, R. S. Mo. 1929, provides for the loss of citizenship and for offenses affecting records, currency, instruments and securities.

Section 8787, R. S. Mo. 1929, deals with juries in counties having sixty thousand (60,000) nor more than two hundred thousand (200,000) inhabitants, and section 8803, R. S. Mo. 1929, deals with juries in counties containing two hundred thousand (200,000) nor more than four hundred thousand (400,000), and provides as follows:

"None of the following persons shall be permitted to serve as jurors\* \* \* \*, any person who has been convicted of a felony\* \* \* \*."

Section 3947, R. S. Mo. 1929, provides for the disqualification of the right to hold office for offenses by persons in office or affecting public trust and rights and concerning elections, and section 4404 R. S. Mo. 1929, provides the same disqualification for various offenses.

From the foregoing we are of the opinion that if a man be convicted of felony or any of the crimes above set out, whether in a State or Federal Court, he forfeits his right to serve as juror in any cause, both criminal and civil, and the right to hold an office of honor, trust or profit within this State.

Section 4462, R. S. Mo. 1929, sets out the effect of conviction in another state and reads as follows:

"Every person who shall have been convicted in any of the United States, or in any district or territory thereof, or in a foreign country, of an offense which, if committed in this state, would be

Honorable Alfred L. Rottman -7- January 23, 1935.

punishable by the laws of this state by imprisonment in the penitentiary, shall, upon conviction for any subsequent offense, within this state, be subject to the punishment herein prescribed upon subsequent convictions, in the same manner and to the same extent as if such first conviction had taken place in a court in this state."

The above provisions recognize a conviction in any of the United States or in any district or territory thereof, or in a foreign country of an offense which if committed in this State would be punishable by the laws of this State by a punishment in the penitentiary. Although the above conviction relates only to those offenses which would be punishable by the laws of this State by punishment in the penitentiary, how much more reason is there to give effect to a conviction for a felony in a United States District Court. It is true that the District Courts might declare that the commission of a certain act by statutes constitutes a felony and the State might not have a provision covering punishment of such offense, yet if a man loses his citizenship for a federal offense, it cannot be said that he retains it as to the State merely because the State has failed to constitute its action an offense punishable by imprisonment.

We are, therefore, of the opinion that with respect to the civil rights of a person with legal residence in Missouri, who has been convicted and sentenced in the United States Court for committing a felony, they are the same as that of a person convicted in the State Courts, except as to such civil rights as executing a mortgage and making a contract which are not suspended in Missouri by reason of the fact that a man has been convicted and sentenced in the United States District Court for committing a felony.

Respectfully submitted

APPROVED:

4WM. ORR SAWYERS  
Assistant Attorney General.

---

ROY McKITTRICK  
Attorney General.  
W.C. M.V. 11