

PAROLES: Paroled persons who have received ~~final~~ discharge are eligible for public office.

October 31, 1938

Mr. Louis Jean Gualdoni, Committeeman  
Twelfth Congressional District  
St. Louis, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion, which request reads as follows:

"I am writing to you asking if you will be kind enough to give me an opinion on a case of this kind.

"On October 25th, 1929, a Mr. Albert Grellner pleaded guilty of Larceny of a Motor Vehicle, and upon his plea he received a sentence of one year in the Workhouse and a fine of \$100.00, but was paroled for two years upon his payment of the \$100.00 fine.

"Would this man be eligible to run for a Public Office, such as Constable, Justice of the Peace, etc?

"I am enclosing a copy of the commitment, and after you have looked it over, would you be kind enough to mail it back to me, together with your opinion on the above case.

"Trusting to hear from you on this case, I remain"

Attached to said request appears a letter which reads as follows:

"TO WHOM IT MAY CONCERN:

This is to certify that the records of the Parole Office disclose that Albert Grellner was charged with the larceny of an automobile and on the 25th day of October 1929, he was sentenced to a term of one year in the city workhouse and a fine on one hundred dollars and costs imposed by Judge Calhoun then presiding in Division #11 Circuit Court for Criminal Causes; that sentence on the above date was duly pronounced and thereafter to-wit, on the same date, October 25, 1929, the defendant was granted a bench parole and placed on probation to report to the parole officer for a period of two years from said date. The records of the parole office further show that the defendant complied with all of the requirements of his parole and reported for a period of two years, his record in this office was then marked on October 14, 1931 'Settled, that is to say, the defendant was relieved from the discharge of any further obligations growing out of his parole.

Respectfully submitted,

Thomas E. Mulvihill,  
Parole Officer "

Section 4172, R. S. Mo. 1929 reads as follows:

"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: \* \* \* \* "

It will be seen that by the terms of the foregoing statute the person inquired about in your request for an opinion would be disqualified from holding any public office, unless the parole which he received removed such disqualification.

Section 3810, R. S. Mo. 1929 reads as follows:

"The courts named in section 3809 of this article, or the judge thereof in vacation, subject to the restrictions hereinafter provided, may in their discretion, when satisfied that any person against whom a fine has been assessed or a jail sentence imposed by said court, or any person actually confined in jail under judgment of a justice of the peace, or sentenced to the state industrial home for girls, or to the Missouri training school for boys, will, if permitted to go at large, not again violate the law, parole such person and permit him or her to go at large upon such conditions and under such restrictions as the court or judge granting the parole shall see fit to impose; \* \* \* \* "

Section 3816, R. S. Mo. 1929 reads as follows:

"When any person who has been paroled under the provisions of sections 3809

to 3821, inclusive, shall have been at large under such parole for the minimum term prescribed by section 3817 of this article, and the court granting the parole shall be satisfied that the reformation of such person is complete and that he will not again violate the law, such court may, in its discretion, by order of record, grant his absolute discharge. Such order of discharge shall recite the fact that such person has earned his discharge by good behavior, and such order shall operate as a complete satisfaction of the original judgment by which the fine or jail sentence or imprisonment in the penitentiary was imposed."

The information furnished in your request and accompanying your request does not reflect that the court which granted the parole ever entered an order of record granting the paroled person an absolute discharge. However, section 3817 R. S. Mo. 1929 provides as follows:

"No person paroled under the provisions of section 3810 of this article shall be granted an absolute discharge at an earlier period than six months after the date of his parole, nor shall such parole be continued for a longer period than two years from date of parole; but if he shall have been the second time paroled the time shall be counted from date of second parole. No person paroled under the provisions of section 3813 of this article shall be granted an absolute discharge at an earlier period than two years from date of his parole, nor shall such parole continue for a longer period than ten years: Provided, that if no absolute discharge shall be granted, nor the parole terminated

within the time in this section limited, it shall be the duty of the court at the first regular term after the expiration of such time to either grant an absolute discharge or terminate the parole and order the judgment or sentence to be complied with, but if the court shall fail to take any action at such time, such failure to act shall operate as a discharge of the person paroled. (R. S. 1919, section 4163)."

The information furnished with your request shows that the convicted person complied with all the terms and conditions of his parole and reported faithfully to the court during a two-year period. The information also shows that his record has been marked "settled." While we do not think that the marking of the record "settled" without information as to who made such record entry amounts to an order of record by the court granting an absolute discharge, yet it does indicate that the paroled person had reported to the court in accordance with the terms of his parole. Furthermore, the record does not show that the parole was ever terminated by the court, and therefore in accordance with the provisions of section 3817, supra, the paroled person would automatically stand discharged after the first term following the two-year period of his parole.

In the case of *In re Mounce*, 307 Mo. 40, the court was discussing the effect of section 3817 as regards a person paroled under the provisions of section 3813, which latter section referred to paroles granted under section 3811. The court held that the circuit court could keep a parole in force under these latter sections for as long as ten years and that the provisions in section 3817 for an automatic discharge of the paroled person would not come into play until the expiration of the ten year period. The court said, l. c. 47:

"If words could possibly make more clear and understandable the legislative intent, expressed in the proviso of Section 4163,

we have not the slightest hesitancy in holding that such proviso simply means that, if a ten-year period has elapsed after a given parole has been granted and neither the parole has been terminated nor the paroled person has been discharged from his sentence within such ten-year period, the court must either grant an absolute discharge of such person or terminate his parole at the first term of court thereafter, or the law will conclusively presume thereafter that such person has been discharged. No other conclusion can reasonably be reached."

Since the parole we are considering cannot under the terms of section 3817 run for a longer period than two years, then we think it follows from the foregoing decision in the case of *In re Mounce* that at the first term after the expiration of said two-year period the paroled person would be automatically discharged if the court did not at such term terminate the parole. Since the parole could not be kept in force for a longer period than two years, it would stand to reason that the paroled person would be free from said parole at the expiration of said term, unless, however, the court at that term exercised its right to terminate the parole and cause the paroled person to serve the sentence imposed upon him. The record in the case we are considering does not show that the circuit court terminated the parole at the first regular term after the expiration of said two-year period, and therefore we must conclude that the paroled person was automatically discharged from said parole at that time.

Section 3820 R. S. Mo. 1929 reads as follows:

"Any person who shall receive his final discharge under the provisions of sections 3809 to 3821, inclusive, shall be restored to all the rights and privileges of citizenship. (R.S. 1919, section 4166.)"

Mr. Louis Jean Gualdoni

-7- October 31, 1938

It will be noted that section 3820 says that the person who shall receive his final discharge under the provisions of sections 3809 to 3821 shall be restored to the rights of citizenship. He may either receive that final discharge by an order of record from the court which paroled him or by operation of law as set forth in section 3817. In the instant case, the paroled person received his final discharge by operation of law and therefore, we think he was automatically restored to the rights and privileges of citizenship at the first term of the circuit court following the expiration of his two-year parole.

Conclusion

It is, therefore, the opinion of this office that Mr. Albert Grellner, insofar as the conviction for larceny set forth in your request for an opinion is concerned, is eligible to hold public office in this state.

Yours very truly

HARRY H. KAY  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

HHK/w