

SCHOOLS: Director need not be qualified voter.

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Mr. Thomas L. Arnold
Ass't Prosecuting Attorney
Scott County
Benton, Missouri

Dear Sir:

We have received your request for an opinion of this department on the following questions:

"Some problems have arisen over the recent school elections held in one of the Scott County School Districts. Therefore, I would appreciate very much an opinion from your office on the following questions.

"1. Must a director elected under section 10469, MRS 1939, in addition to the qualifications set out in said section, be also a qualified voter as set out in Laws of Missouri 1943, page 555, Section 1 (in particular, can he be a candidate and be elected when he has been convicted of a felony)?

"2. Is a person disqualified as a voter under Laws of Missouri, 1943, page 555, Section 1, who has been convicted of a felony under the laws of a sister state (Arkansas)? And if so, for how long does the disqualification continue (until full pardon, until sentence is served or parole expires)?"

Section 10420, R. S. Mo. 1939, prescribes the qualifications of directors of a common school district as follows:

"The government and control of the district shall be vested in a board of directors composed of three members, who shall be

citizens of the United States, resident taxpayers of the district, and who shall have paid a state and county tax within one year next preceding his, her or their election, and who shall have resided in this state for one year next preceding his, her or their election or appointment, and shall be at least twenty-one years of age. * * *

Section 10469, R. S. Mo. 1939, prescribes similar qualifications of city, town and consolidated school districts with the exception of the fact that the minimum age is fixed at thirty years.

Neither of these sections requires expressly that a person be a qualified voter in order to be eligible to serve as a school district director. Such requirement was formerly found in the statutes prescribing qualifications for such office. Sections 10847 and 10867, R. S. Mo. 1909, which correspond to Sections 10420 and 10469, R. S. Mo. 1939, contain such provision. However, the requirement was eliminated by an amendatory act found in Laws 1917, page 505, and the sections in question were enacted in their present form at that time. The title of the amendatory act discloses that the amendment was made in order to permit women who were not at that time eligible to vote to serve as directors.

In view of the foregoing history of the sections, we think it clear that a person need not be a qualified voter in order to be eligible to serve as a school district director.

However, your inquiry is directed to the question of whether or not a person who has been convicted of a felony is eligible to such office. There are in the Criminal Code of this state numerous provisions making a person convicted of almost any of the felonies under the laws of this state ineligible to hold any "office of honor, trust or profit within this state." Sections 4322, 4357, 4427, 4561, 4601 and 4796, R. S. Mo. 1939.

We find no cases in this state dealing with the question of whether or not the office of school district director is an "office of honor, trust or profit" within the meaning of these statutory provisions. However, the position has been held to be a state office (State ex inf. Sutton v. Fasse, 189 Mo. 532, 88 S.W. 1) and it has been held to be an "office of trust" within the meaning of statutory provisions in other states (State v. Jones, 143 Tenn. 575, 224 S.W. 1041). See State ex rel. Brickey v. Nolte, 350 Mo. 842, 169 S.W. (2d) 50.

Such disability may be removed by a pardon by the Governor (Section 9227, R.S. Mo. 1939). When discharge from the penitentiary is under the three-fourths rule, upon a first conviction, civil disabilities terminate at the end of two years from such discharge (Section 9086, R.S. Mo. 1939).

In regard to your second inquiry, the Supreme Court of this state held in the case of State ex rel. Barrett v. Sartorius, 351 Mo. 1237, 175 S.W. (2d) 787, that the constitutional (Section 2 of Article VIII of the Constitution of 1945) and statutory (Section 11469, R.S. Mo. 1939, Laws 1943, page 555) provisions relating to disfranchisement for a conviction for a felony included a conviction for any offense which is a felony under the laws of the jurisdiction in which the conviction was obtained. The court in that case was considering particularly a conviction in Federal court for an offense which was not a felony under Missouri law, and the court held that it was such a conviction as would result in disfranchisement under the above constitutional and statutory provisions. The same principle would appear to be applicable to convictions obtained in other states.

We find no cases in which the question of the termination of such disability by reason of conviction in a foreign jurisdiction has been considered by the courts of this state. However, in view of the fact that the disability in such case is imposed by reason of Section 11469, R.S. Mo. 1939, its removal would likewise be governed by such section and, therefore, the disability would continue until pardoned by the Governor.

Conclusion.

Therefore, it is the opinion of this department that:

(1) A school district director need not be a qualified voter, but that a person convicted of an offense under the laws of this state, which conviction renders him disqualified to hold any "office of honor, trust or profit," is ineligible to serve as school district director unless such disability is removed in accordance with statute.

(2) Conviction of felony in a foreign jurisdiction disqualifies a person from voting in this state, and such disability may be removed only by pardon by the Governor.

Respectfully submitted,

APPROVED:

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