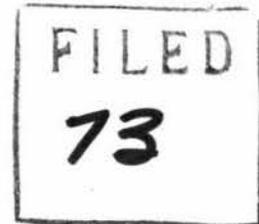


ELECTIONS: Conviction upon plea of nolo contendere of Federal income tax evasion disqualifies voter.

February 8, 1949



Honorable Frank L. Ramacciotti
Chairman, Board of Election Commissioners
208 South Twelfth Boulevard
St. Louis 2, Missouri

Dear Sir:

We have received your request for an opinion of this department concerning the right of a person to be a registered voter in Missouri under the following circumstances:

In June, 1948, he entered a plea of nolo contendere in the United States District Court in St. Louis to a charge against him of evasion of the Income Tax Law, was sentenced to a year in jail and fined one thousand dollars, and immediately placed on probation for one year. The probation was terminated by order of the judge of the District Court within thirty days after the plea was entered.

In the case of State ex rel. Barrett v. Sartorius, 351 Mo. 1237, 175 S.W. (2d) 787, the Missouri Supreme Court held that under the provisions of Section 2 of Article VIII of the Constitution of 1875, and Section 11469, R. S. Mo. 1939, which provide for disfranchisement upon conviction of a felony, a person who had entered a plea of guilty in the United States District Court to an indictment charging him with attempting to evade payment of income taxes to the United States (26 U.S.C.A., Section 145(b)) was not entitled to be registered as a qualified voter. The decision in that case, we feel, answers your question (Section 2, Article VIII of the Constitution of 1945 did not change in any material manner the same provision of the Constitution of 1875, and the amendment of Section 11496, R. S. Mo. 1939, by Laws of 1943, page 555, made no change in that section insofar as the present question

is concerned), unless the fact that, in the situation which you have presented, the conviction was entered upon a plea of nolo contendere rather than a plea of guilty would lead to a different result.

In the case of *Wilson v. Burke*, 356 Mo. 613, 202 S.W. (2d) 876, the Supreme Court considered the question of whether or not conviction by United States District Court upon a plea of nolo contendere to an indictment charging violation of the United States Liquor Laws was a conviction within Section 4906, R.S.Mo. 1939, which provides, in part:

" * * * no person shall be granted a license or permit * * * who has been convicted, since the ratification of the twenty-first amendment to the Constitution of the United States, of a violation of the provisions of any law applicable to the * * * sale of intoxicating liquor, * * *"

In that case the court held that the fact the judgment of conviction had been entered upon a plea of nolo contendere made no difference inasmuch as the statute contained no provision that a judgment of conviction based upon such plea should be an exception which would permit the Superintendent of the Department of Liquor Control to grant a license. "The legislature has the right to ignore the manner in which the conviction was reached, whether upon trial, upon plea of guilty or plea of nolo contendere." (202 S.W. (2d) l.c. 878)

In the case of *Neibling v. Terry*, 352 Mo. 396, 177 S.W. (2d) 502, the Supreme Court upheld a judgment of disbarment under a statute (Section 13333, R. S. Mo. 1939) which authorized such action upon a "conviction for any criminal offense involving moral turpitude." The respondent in that case contended that because he had pleaded nolo contendere to a charge of using the mails to defraud, the judgment of conviction based upon such plea could not be used with the basis of disbarment action. The court held that inasmuch as the statute made no distinction or exception in a judgment of conviction, according to the nature of the plea resulting in such conviction, the court lacked authority to write any exception into the statute.

In the case which is the subject of your inquiry, a judgment of conviction was actually entered by the court on the plea of nolo contendere, and therefore the case of Meyer v. Missouri Real Estate Commission, 238 Mo.App. 476, 183 S.W. (2d) 342, in which no actual conviction on the plea of nolo contendere had been entered, is not in point here.

In view of the foregoing authorities, we think that the court of this state would not make any distinction because of the fact that the conviction was had upon the plea of nolo contendere.

CONCLUSION

Therefore, it is the opinion of this department that a person who has been convicted on a plea of nolo contendere in a Federal court on a charge of evasion of United States income tax is disqualified from voting in this state.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General