

ELECTIONS: Coleman R. Smith not a qualified voter of State of Missouri for two years prior to February 16, 1954, due to previous conviction of a felony and without having subsequently obtained "full pardon" as such term is used in Section 111.060, RSMo 1949.



April 19, 1954

Honorable Clifford Jones
Chairman, House Committee on Elections
Missouri House of Representatives
State Capitol Building
Jefferson City, Missouri

Dear Mr. Jones:

The following opinion is rendered in reply to your letter of March 23, 1954, which was also signed by Honorable Richard H. Ichord and Honorable Robert W. Copeland, members of the subcommittee appointed by the House Committee on Elections. Notice is taken of the urgency of your request in view of the fact that the same was authorized by resolution adopted by the House Committee on Elections on March 16, 1954.

This task becomes less burdensome due to the effort of your Committee in making available to this office numerous documents and data to support the agreed question, and facts, quoted from your letter as follows:

"The question: Was Coleman R. Smith a qualified voter of the State of Missouri for two years preceding February 16, 1954, the date of a special election to fill a legislative vacancy in Sullivan County? (Art. III, Sec. 4, Mo. Const. 1945)

"Agreed Facts: On October 24, 1939, Coleman R. Smith was sentenced to the Alcoa Farms for a period of two years for stealing timber in Taney County. His date of birth was November 10, 1916; therefore he was 22 years, 11 months old on date of conviction. He was released from the

Honorable Clifford Jones

Intermediate Reformatory under Conditional Commutation of Sentence on April 25, 1940, and received a notification of discharge from the Board of Probation and Parole, Jefferson City, Missouri on October 24, 1941.

"The records in the Board of Probation and Parole office in the Secretary of State's office, show that no restoration of citizenship or pardon has been granted Coleman R. Smith.

"Both parties to the contest agree that Sec. 549.170 and Sec. 217.370 do not apply. Mr. Smith did not receive a Judicial Parole or Bench Parole (549.170) nor did he qualify under the 3/4th Statute (217.370)."

Article III, Section 4, Missouri's Constitution of 1945 provides:

"Each representative shall be twenty-four years of age, and next before the day of his election shall have been a qualified voter for two years and a resident of the county or district which he is chosen to represent for one year, if such county or district shall have been so long established, and if not, then of the county or district from which the same shall have been taken."

Article VIII, Section 2, Missouri's Constitution of 1945 touches upon the qualifications of voters and has sufficient bearing on this problem to necessitate its quotation, as follows:

"All citizens of the United States, including occupants of soldiers' and sailors' homes, 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, and no other person, shall be entitled to vote at all elections by the people; provided, no idiot, no insane person and no

Honorable Clifford Jones

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 voting." (Underscored supplied.)

The underscored portion of Article VIII, Section 2, Missouri's Constitution of 1945, quoted above, stands as the Constitutional authorization for the numerous statutes we find in Missouri's laws which make persons convicted of certain felonies, or of crimes connected with the exercise of the right of suffrage, ineligible to vote or enjoy other designated civil or political rights, more commonly referred to as rights of citizenship.

At this point we turn to the specific statute under which Coleman R. Smith was convicted and sentenced in 1939. Section 560.485 RSMo 1949 (Sec. 4542 R. S. Mo. 1939) remains unchanged since Coleman R. Smith was charged and convicted thereunder, and reads as follows:

"Any person who shall take and carry away any trees, or parts thereof suitable for manufacture into the timber products herein named, or any logs, timber, lumber, staves, stavebolts, ties, piling, heading or shingles cut from such lands, with intent to convert the same to his own use or the use of his employer or principal, shall be deemed guilty of a felony, and upon conviction, shall be punished by imprisonment in the state penitentiary for a period of not more than five years, or by imprisonment in the county jail for a period of not less than three months, or by fine not less than three hundred dollars."

Section 560.485 RSMo 1949, quoted above, clearly discloses that the person convicted thereunder is to be deemed guilty of a "felony." Article III, Section 4, Missouri's Constitution of 1945, quoted supra, outlines the qualifications of a member of the Missouri House of Representatives. Although such constitutional provision does not specifically disqualify one who has been convicted of a felony, it does require that the person seeking to qualify as a member of the House of Representatives be a

Honorable Clifford Jones

"qualified voter." This requirement makes it necessary to turn to Article VIII, Section 2, Missouri's Constitution of 1945, quoted supra, Missouri's basic law touching qualifications of voters. When we seek to find in Article VIII, Section 2, Missouri's Constitution of 1945 language which would disqualify a person convicted of a felony, as a "qualified voter", we discover not a positive prohibition in relation thereto, but a mere grant of authority to the General Assembly to enact laws touching the subject. This grant of authority is in the following language:

"* * * and persons convicted of felony, or crime connected with the exercise of the right of suffrage may be excluded by law from voting." (Underscoring supplied.)

Without argument it must be conceded that Coleman R. Smith was not convicted of a crime connected with the right of suffrage. However, uncontroverted facts disclose that he was convicted of a felony.

If Coleman R. Smith is, in view of the language found in the two constitutional provisions quoted above, not a "qualified voter," where do we place our finger on the legislative enactment so disqualifying him? Such enactment is not found in the language of the statute under which he was admittedly convicted. The placement of statutes by the legislature is often controlling when determining the scope of laws. At the time of conviction in this case Section 4542 R.S.Mo. 1939 was part of Article 5, Chapter 31, Revised Statutes of 1939, which Article 5 was entitled "Offenses Against Public and Private Property," and contained more than one hundred statutes defining particular criminal offenses against public and private property, and each statute defining an offense also prescribed a penalty therefor. In none of said statutes do we find a penalty provision calling for suspension or forfeiture of civil or political rights. However, near the close of said Article 5, we find Section 4561, a statute with over-all application to the preceding statutes found in such Article 5, and it 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

Honorable Clifford Jones

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: Provided, that the provisions of this section shall not apply to any person who at the time of his conviction shall be under the age of twenty years: Provided further, that in all cases where persons have been convicted under this article the disqualification provided may be removed by the pardon of the governor any time after one year from the date of conviction."

The body of statutes referred to above as being embraced in Article 5, are now found in Chapter 560 RSMo 1949, and the above quoted section 4561 R.S. Mo. 1939 is now Section 560.610 RSMo 1949, reading as follows:

"Any person who shall be convicted of arson, burglary, robbery or grand larceny, or who shall be sentenced to imprisonment in the penitentiary for any other crime punishable under the provisions of this chapter, 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; provided, that the provisions of this section shall not apply to any person who at the time of his conviction shall be under the age of twenty years; provided further, that in all cases where persons have been convicted under this chapter the disqualification provided may be removed by the pardon of the governor any time after one year from the date of conviction."

A reading of Section 4561 R.S.Mo. 1939, as it now appears at Section 560.610 RSMo 1949, discloses that little if any change has been made in its language. Where the statute formerly referred to crimes punishable under the article, it now makes reference to crimes punishable under the chapter.

Honorable Clifford Jones

The first portion of Section 560.610 RSMo 1949, as it appeared in Section 4561 R.S. Mo. 1939, makes the statute applicable to (1) any person who shall be convicted of arson, burglary, robbery or larceny, in any degree in the article specified, and (2) to any person who shall be sentenced to imprisonment in the penitentiary for any other crime punishable under the provisions of the article. Referring to the agreed facts submitted with the request for this opinion, it stands conceded that Coleman R. Smith was not sentenced to the penitentiary, thus taking him out of the classification at (2) above. The same admitted facts disclose that the crimes of burglary and robbery are not involved. As to larceny in any degree specified in said article, it is concluded that since Section 4542 R.S. Mo. 1939, now Section 560.485 RSMo 1949, makes the offense described therein a felony regardless of the amount of property taken, and without any reference to the crime of larceny in any degree, Coleman R. Smith was not convicted of larceny in any degree as specified in former Section 4561 R. S. Mo. 1939, now Section 560.610 RSMo 1949. This being so it is not necessary to further construe Section 560.610 RSMo 1949, as being applicable to the case being considered.

We next turn to the law of suffrage and elections and find Section 111.060 RSMo 1949, a statute of general application, providing 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. Each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides. No idiot, no insane person and no person while kept in any poorhouse at public expense or 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 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

Honorable Clifford Jones

pardon; and after a second conviction of felony or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting."

One needs only to compare the language of the foregoing Section 111.060 RSMo 1949 with the language found in Article VIII, Section 2, Missouri's Constitution of 1945, to conclude that such statute was written in the light of the constitutional provision and was meant to be the legislature's compliment to the constitution. The statute is clear and unambiguous in the following portion thereof:

"* * *; 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; and after a second conviction of felony or of a misdemeanor connected with the right of suffrage, he shall be forever excluded from voting."

Having heretofore concluded that Coleman R. Smith was convicted of a felony, it is now concluded that in the face of the clear language found in Section 111.060 RSMo 1949, he cannot be deemed a "qualified voter" as such term is used in Article III, Section 4, Missouri's Constitution of 1945, unless the evidence discloses that he has, subsequent to his conviction, been granted a full pardon, either by direct action of the Governor, or by the force and effect of a statute which would, upon compliance with its terms, automatically remove civil disabilities and restore rights of citizenship without the Governor's action.

Admitted facts disclose that Coleman R. Smith was sentenced to the Intermediate Reformatory for Young Men on October 24, 1939, and released on conditional commutation of sentence on April 25, 1940, with final discharge by the Board of Probation and Parole on October 24, 1941. At the time the conditional commutation of sentence was granted on April 25, 1940, the Governor's power to grant the same was found in Article V, Section 8, Missouri's Constitution of 1875, which section read as follows:

"The Governor shall have power to grant reprieves, commutations and pardons, after

Honorable Clifford Jones

conviction, for all offenses, except treason and cases of impeachment, upon such condition and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall, at each session of the General Assembly, communicate to that body each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the commutation, pardon or reprieve, and the reason for granting the same."

What is meant by the term "full pardon" as the same is used in Section 111.060 RSMo 1949? Missouri statutes do not define the term. In 67 C.J.S., Pardons, Sec. 1,b, we find that pardons may be of several kinds. The following quotation is extracted from the foregoing citation:

"A pardon is an act of grace proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed; it is a private, although official, act of the executive magistrate delivered to the individual for whose benefit it is intended. There are several kinds of pardons; thus a pardon may be full or partial, absolute or conditional. A pardon is full when it freely and unconditionally absolves the person from all the legal consequences of his crime and of his conviction, direct and collateral, including the punishment, whether of imprisonment, pecuniary penalty, or whatever else the law has provided; * * *" (Underscoring supplied)

The "conditional commutation" issued in the case of Coleman Smith (Coleman R. Smith) contains no language from which we can attribute to it the character of a "full pardon" as such term is defined in the extracted quotation from C.J.S., supra. One needs only to read the "conditional commutation" to discover that it does not unconditionally absolve Coleman Smith (Coleman R. Smith)

Honorable Clifford Jones

from all the legal consequences of his crime and of his conviction, direct and collateral, including the penalty provided therefor. The document titled "Conditional Commutation" must be construed in the light of the provisions contained therein, and it cannot be concluded in this opinion that such "conditional commutation" constitutes a "full pardon" as such term is used in Section 111.060 RSMo 1949.

CONCLUSION

It is the opinion of this office that Coleman R. Smith was not a qualified voter of the State of Missouri for two years preceding February 16, 1954, the date of a special election to fill a vacancy from Sullivan County, Missouri in the Missouri House of Representatives, due to his previous conviction of a felony, and without having subsequently obtained a "full pardon" as such term is used in Section 111.060 RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

JLO'M/vtl