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Mr. Joseph M. Whealen, Chairman  
Jefferson County Republican Committee  
Route #2, Box III  
High Ridge, Missouri

In re: Martin Burgess

Dear Mr. Whealen:

I have your recent letter regarding Martin Burgess, Judge of the Jefferson County Court (First District).

In the case of State ex inf. vs. Burgess, 264 S.W.2d 339, Burgess was ousted from the office of Assessor as a result of a civil quo warranto proceeding. The allegation in this proceeding was that he violated provisions of Sec. 558.090 by soliciting a bribe. The judgment of the court was that he be ousted from office. No sentence was imposed upon him and, of course, none could be imposed in a civil quo warranto proceeding.

Sec. 558.130 disqualifies one from holding office who has been "convicted of any of the offenses mentioned in sections 558.010 to 558.120." The word "convicted" refers to criminal proceedings, not civil. The Supreme Court of Oregon, in discussing the meaning of the word "conviction" wrote as follows:

"The terms 'conviction' and 'punishment' each have a well-settled legal meaning, and are used in the law to designate certain stages and incidents of a criminal prosecution; and when the legislature declared that for a violation of his official duty a county treasurer should, on conviction thereof, be punished, it manifestly intended that the proceedings against him should be on the criminal, and not the civil, side of the court."

In the case of State vs. Madget, 297 SW 2d 416, where quo warranto was brought against a county judge alleging violations of Section 558.110 and in which case the judge was ousted from office, the court held that quo warranto is a civil proceeding and that the only object of such proceeding is to oust an individual from office or to declare that the office has been forfeited.

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In the present situation no question arises as to whether or not ouster from office can be based upon violations or acts committed by such officer in a previous term. In the cases of State vs. Mosley, 286 S.W.2d 721 and State vs. Wymore, 132 S.W.2d 979, the Supreme Court expressly reserved such question. However, in those cases the proceedings related to violations in previous terms and did not involve the question of a proceeding which had been begun and completed during a prior term.

In the case of State ex rel vs. Patten, 131 Mo. App. 628, the court held that a city treasurer could not be removed from office because of proof that previously, while holding the office of city collector, such person had embezzled monies from the city under a provision for removal "for cause shown." The court said that such person could not be removed "for cause shown" unless he had been "convicted" in a court of law of such embezzlement; therefore, even when there is a provision for removal of an officer "for cause shown," a conviction for a crime must be shown. In the present case there has been no conviction.

As previously pointed out, quo warranto is civil in nature and the only affect that can be given the successful prosecution of such a writ is to oust someone from exercising the franchise of office. It is obvious that such ouster is not a conviction of a crime. The ouster of Mr. Burgess in the quo warranto proceeding would certainly not have prevented the prosecuting attorney from prosecuting him under the provisions of Section 558.090, providing for a punishment upon conviction thereof by a sentence in the penitentiary for not exceeding five years. It follows, therefore, that if he could have been convicted for such crime the quo warranto finding would not have been a conviction because under the state and federal constitutions no person can be convicted twice for the same offense.

The court, in the Wymore case, supra, by holding that Wymore was ousted only from the remainder of his first term of office held that the effect of ouster in a quo warranto proceeding was not such fundamentally as to prohibit a person from holding office subsequent to removal by quo warranto, and since Mr. Burgess was not convicted of a violation of Section 588.090 he is not disqualified from holding the office of county judge under the provisions of Section 558.130.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

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cc: Hon. William B. Milfelt