

CONVICTS: A person is disqualified from holding the
CITIZENSHIP: office of notary public if such person has
NOTARY PUBLIC: been convicted of forgery in violation of
PAROLE: Section 561.011, RSMo. 1959, and such person
CRIMINAL LAW: has been sentenced to imprisonment and
granted a judicial parole on the day of
conviction and sentence and if said person
has not been finally discharged from such
judicial parole.

Opin. No. 74.

February 21, 1962

Honorable George Q. Dawes
Prosecuting Attorney
Iron County
Ironton, Missouri



Dear Mr. Dawes:

This is in answer to your letter of January 12, 1962, and your letter of January 19, 1962, in which you request an opinion of this office. From your two letters we paraphrase your question as follows:

"When a person over the age of 21 years entered a plea of guilty to forgery (Section 561.011, RSMo. 1959) on January 6, 1961, was given a five year sentence and granted a judicial parole on the day of his conviction and sentence and the party involved is presently on said parole, does that person lose his citizenship under Section 561.340, RSMo. 1959, and is he disqualified from holding office as a notary public?"

Section 561.340, RSMo. 1959, referred to in your letter reads as follows:

"Every person who shall be convicted of any felony punishable by the provisions of sections 561.010 to 561.360 shall be incompetent to be sworn as a juror, and forever disqualified from voting at any election, or holding any office of honor, trust or profit within this state."

A judicial parole is authorized by Section 549.060, RSMo. 1959. Section 549.080, RSMo. 1959, provides that when

any person ... shall be convicted of any felony ... and imprisonment in the penitentiary shall be assessed as the punishment therefor and the sentence shall have been pronounced, the court before whom the conviction was had ... may in his discretion, by order of record, parole such person. The termination of this parole is governed by Sections 549.070 and 549.090, RSMo. 1959. The discharge of the person paroled is governed by Section 549.140, RSMo. 1959. Section 549.170, RSMo. 1959, reads as follows:

"Any person who shall receive his final discharge under the provisions of sections 549.060 to 549.180 shall be restored to all the rights and privileges of citizenship."

From a reading of these sections it is clear that a person loses his citizenship when he is convicted of a felony for a violation of Section 561.011, RSMo. 1959, and is sentenced to imprisonment in the penitentiary, irrespective of whether he is thereafter granted a judicial parole; and it is also clear that the person is not restored to the rights and privileges of citizenship at least until he has been finally discharged from the judicial parole.

Under the facts presented in your opinion request the party involved has not been finally discharged from parole and he has therefore not been restored to his citizenship. He is therefore disqualified from holding any office of honor, trust, or profit within this state.

The office of notary public is governed by Chapter 486 of the Missouri Revised Statutes of 1959. A notary public is appointed and commissioned by the Governor under Section 486.010, RSMo. 1959. The powers and duties of a notary public are specified in Section 486.020, and a reading of this section clearly indicates that the office is one of great trust by virtue of the very nature of the powers and duties conferred on a notary public. Fees for a notary public are specified by Section 486.090, RSMo. 1959, and since a notary public is entitled to these fees, it is obvious that the office of notary public is an office of profit. Since the office of notary public is an office of trust and profit within the State of Missouri, the party involved and described in your opinion request is disqualified from holding such office.

In your opinion request you inquired further as to the proper remedy to recover the commission as a notary public from the party involved. We suggest that an amicable recovery of the commission be attempted, and if a voluntary surrender of the commission as a notary public is not feasible, we can then advise as to the appropriate remedy for the recovery or recall of the commission.

CONCLUSION

A person is disqualified from holding the office of notary public when such person has been convicted of forgery in violation of Section 561.011, RSMo. 1959, and such person has been sentenced to imprisonment even though such person was granted a judicial parole on the day of conviction and sentence, if said person has not been finally discharged from such judicial parole.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Wayne W. Waldo.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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