PRISONERS:
CONSTITUTIONAL LAW:
LEGISLATURE:
CLAIMS:

A person erroneously convicted does not have a "legal claim" against the state and the legislature maynot make a grant for his relief under our present Constitution. An amendment to the Constitution would be necessary to authorize passage of enabling laws to accomplish this.

August 26, 1966

OPINION NO. 429 (1965)
OPINION NO. 63 (1966)

FILED
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Honorable Alfred A. Speer
Representative of 12th District, St. Louis County
Missouri House of Representatives
7751 Carondelet Avenue
Suite 406
Clayton, Missouri

Dear Representative Speer:

This opinion is in response to your inquiry whether the legislature has authority to appropriate money for the relief of individuals wrongfully convicted and imprisoned. If there is no authority for such action, would a statutory or constitutional change be necessary to provide such authority?

It is assumed for the purposes of this opinion that the accused (subject of claim herein) was properly charged before a court having jurisdiction of the person and offense; that he was afforded due process; and based upon competent evidence, duly convicted and sentenced under the statutes.

Article III, Section 38(a), Missouri Constitution,1945, provides, in pertinent parts, that:

> "The general assembly shall have no power to grant public money or property * * * to any private person * * *."

The term "grant" as used in Section 38(a) of Article III, is a word of special meaning (as used here) and needs to be

defined. The Missouri Supreme Court in State ex rel. v. Howard, 208 S.W.2d 247, l.c. 250, had this to say:

> "* * * This prohibition does not apply (speaking of Section 38(a)) to the appropriation to relator because it was in payment of a valid public obligation and was not a grant or gift of public money* * *."
> (Insert ours)

We believe the words "grant" and "gift" can be equated and that the term imports an act granting money to a private person without a valuable consideration.

On the basis of the assumed factual posture of this case, the next consideration for resolution is whether a valid claim exists. In 81 C.J.S. "States" Section 194 at p. 1260, we find the following definition of a "legal claim" to be:

> "A claim against the state is a demand by some one other than the state against it for money or property; but when the claim originates with the state, or in its behalf, and contemporaneously with its origin, and means and manner of payment are provided, as in the case of a bond, it does not then constitute a claim proper against the state, but a liquidated and legalized demand against the treasury. A 'legal claim' against the state is one recognized or authorized by the law of the state, or which might be enforced at law if the state were a private corporation. Within the meaning of statutory or constitutional provisions relating to their presentation and allowance, the term 'claims against the state' refers to a legal claim, a claim as of right, and generally it is further limited to claims arising out of contract, where the relationship of debtor and creditor exists.
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> "The term has been held not to include a claim for damages from negligent acts of the state's employees, a gratuity to recompense a citizen for false imprisonment for a crime, * * *"

The Supreme Court of the State of Montana gave a very clear

definition of what constitutes a "legal claim" against a State in the case of Mills vs. Stewart, 247 Pac. 332. That Court, l.c. 335, defined the phrase "legal claim" as follows:

> "* * * If the term 'legal claim' as applied to a state has any meaning, it must refer to a claim which is recognized or authorized by the law of the state, or one which might be enforced in an action at law if the state were a private corporation, * * *"

See also Allen v. Board of Auditors (Mich. -1899) 81 N.W. 113 l.c. 114.

This constitutional provision (supra) directly prohibits the "grant" of public monies to a private person. Regardless of how meritoriously on a moral basis the claim may be, this section acts as a direct prohibition to any action by the legislature falling within the ambit of the above quoted section. We conclude therefore that if the claim of this individual is without a legal basis which would be enforceable in an action at law against a private person, any "grant" by the legislature would be prohibited under Article III, Section 38(a), Missouri Constitution of 1945.

If an action at law by claimant exists at all, it would sound in tort for false imprisonment. The elements of that action are:

(1) The detention of the person

(2) The unlawfulness of such detention

See Gerald v. Caterers, Inc., 382 S.W.2d 740; Engelbrecht v. Roworth, 157 S.W.2d 242.

It is to the last element of false imprisonment that is lacking under the factual situation involved here since the person convicted in the instant case was admittedly duly convicted albeit erroneously. We conclude, therefore, that the claimant does not have a "legal claim" but at the most, could be said to have only a claim arising out of a moral obligation. Thus, even if the legislature should enact legislation waiving the doctrine of sovereign immunity, no action would lie.

The claim herein falls within a category having its genesis as a moral obligation and as such, constitutes no more than a moral

consideration for a legislative grant. This factor, in view of our previous discussion of Article III, Section 38(a) of the Missouri Constitution, 1945, would deny granting relief by the legislature. We are aware other states may follow a different rule (see 172 A.L.R. 1407). However, we believe the Missouri rule to be different in that a moral wrong is not a valuable consideration and will not sustain a legal action (Heckmann v. Van Graafeiland, 291 S.W. 190, 192).

We conclude therefore that the erroneous conviction and sentence does not afford a valid basis for an action at law or a legislative appropriation granting relief to this claimant.

There remains the question whether a constitutional amendment would be necessary to grant authority to the legislature before relief could be granted to claimant. Exceptions have been previously written into the Constitution of Missouri in Section 38(a), Article III, as for example, in cases allowing enabling legislation to be enacted on old age assistance, aid to dependent children, etc. Thus, by inserting an appropriate clause in Section 38(a), authority to pass enabling legislation by the legislature to recompense persons wrongfully convicted could be provided for. However, and absent such authority, there exists presently no legal way either by legal action or as a direct legislative grant to compensate a person erroneously convicted under the facts upon which this opinion is predicated. We conclude, therefore, the only way to afford a remedy to a person erroneously convicted would be to have a constitutional amendment as suggested above, and thereafter, for the legislature to enact appropriate enabling legislation.

CONCLUSION

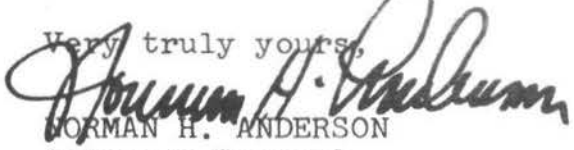
It is our opinion that:

1. The legislature is prohibited by Section 38(a), Article III, of the Missouri Constitution, 1945, from granting direct relief to any person erroneously convicted.

2. A constitutional amendment granting power to the legislature to pass enabling laws authorizing a procedure and payment of monies to a person erroneously convicted would be necessary.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard C. Ashby.

Very truly yours,



NORMAN H. ANDERSON
Attorney General