

PARDON -- Time when pardon is available in preventing
punishment for crime.

May 6, 1938.

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Honorable Frank G. Harris, Chairman
Board of Probation and Parole
Jefferson City, Missouri

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Dear Sir:

We acknowledge your request for an opinion dated April 22, 1938, which reads as follows:

"Please, at your convenience, render us an opinion on the following question:

Assuming that an applicant for citizenship is not deprived of a right to citizenship by reason of any constitutional or statutory inhibition, we would like to know at what instant of time a person whom the Board, after investigation, deems a proper subject for citizenship restoration is entitled to have his citizenship restored?"

Article V, Section 8 of the Missouri Constitution provides:

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

Section 12968, R. S. Mo. 1929, provides:

"A sentence of imprisonment in the penitentiary for a term less than life suspends all civil rights of the persons so sentenced during the term thereof, and forfeits all public offices and trust, authority and power; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead."

Section 12970, R. S. Mo. 1929, provides:

"When any person shall be sentenced upon a conviction for any offense, and is thereby, according to the provisions of this article, disqualified to be sworn as a witness or juror in any cause, or to vote at any election, or to hold any office of honor, profit or trust within this state, such disabilities may be removed by a pardon by the Governor, and not otherwise, except in the case in the next section mentioned."

Section 12971, R. S. Mo. 1929 provides:

"If such convict shall have committed the offense while within the age of eighteen years, and such conviction shall be for a first offense, all civil disabilities incurred shall be removed and his competency restored at the expiration of the term of imprisonment to which he shall have been sentenced."

Section 3798, R. S. Mo. 1929, provides:

"In all cases in which the governor is authorized by the Constitution to grant pardons, he may grant the same, with such conditions and under such restrictions as he may think proper."

In State vs. Sloss, 25 Mo. 291, l.c. 294, the Supreme Court said:

"Although questions have sometimes arisen whether a power properly belonged to one department of government or another, yet there is no contrariety of opinion as to the department of the government to which the power of pardoning offences properly appertains. All unite in pronouncing it an executive function. So the framers of our constitution thought, and accordingly vested the power of pardoning in the chief executive officer of the state."

In the case of Ex Parte Collins, 94 Mo. 22, l. c. 24, 6 S. W. 345, the Supreme Court construed certain commutation statutes against the above constitutional provision, and the court said:

"The constitution of this state authorizes the Governor, after conviction, which means after return of a verdict of guilty *** to grant commutation for all offences, except, etc. "

CONCLUSION.

In a recent opinion to you, we held that loss of civil rights of citizenship as punishment for crime attached under the Missouri Constitution and statutes after judgment and sentence of the court, but not prior to judgment and sentence.

Construing Article V, Section 8 of the Missouri Constitution, supra, the right to pardon one against the loss of civil rights of citizenship as a punishment for crime, is exclusively a constitutional executive function. The conduct of any governmental agency or the construction of any statutes which would operate to hinder, control or curtail the executive power to grant clemency "after conviction" by reprieve, commutation or pardon, was not intended by the framers of our Constitution, and would be unconstitutional to that extent.

In our opinion, the phrase "after conviction" was placed in the Constitution to indicate the instant of time that the Governor may first exercise his constitutional prerogative of reprieve, commutation or parole. In the Collins case, supra, it was decided that the Governor can start functioning with commutation as soon as a jury has returned a verdict of guilty.

We are of the opinion that as soon as a jury has returned a verdict of guilty, or as soon as a defendant pleads guilty, then at that stage of criminal

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proceedings, the Governor may first exercise his constitutional prerogative of a reprieve, commutation or pardon.

Respectfully submitted

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APPROVED:

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