

OPINION NO. 2009-011**Syllabus:**

2009-011

A person who has been convicted of felony domestic violence under the laws of Ohio and who has not been granted a full pardon by the Governor or had his conviction reversed or annulled or the record of his conviction sealed is barred by R.C. 2961.01 from holding the office of township trustee unless he has had the privilege of holding an office of honor, trust, or profit restored to him, as provided in R.C. 2967.16(C)(1) or its predecessors.

To: Jessica A. Little, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Richard Cordray, Ohio Attorney General, May 5, 2009

You have requested an opinion whether a person convicted of felony domestic violence under the laws of Ohio is prohibited from holding the office of township trustee when the person has not been granted a full pardon by the Governor or had his conviction reversed or annulled or the record of his conviction sealed.

R.C. 2961.01(A) provides, in part:¹

(1) A person who pleads guilty to a felony under the laws of this or any other state or the United States and whose plea is accepted by the court or a person against whom a verdict or finding of guilt for committing a felony under any law of that type is returned, unless the plea, verdict, or finding is reversed or annulled, *is incompetent to . . . hold an office of honor, trust, or profit.*

(2) . . . The full pardon² of a person who under division (A)(1) of this section is incompetent to . . . hold an office of honor, trust, or

¹ In addition to R.C. 2961.01, other provisions of law prohibit, in certain circumstances, a person convicted of a felony under the laws of Ohio from holding a public office. *See, e.g.,* Ohio Const. art. II, § 5; R.C. 2921.02(F); R.C. 2921.41(C)(1); R.C. 2961.02(B). None of these statutes, however, applies to a person who is convicted of felony domestic violence under the laws of Ohio.

² The Governor of Ohio may grant “pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as the Governor may think proper; subject, however, to such regulations, as to the manner of applying for . . . pardons, as may be prescribed by law.” Ohio Const. art. III, § 11. *See generally* R.C. 2967.01(B) (as used in R.C. Chapter 2967, which sets out the procedures governing the manner of applying for pardons, “[p]ardon’ means the remission of penalty by the governor in accordance with the power vested in the governor by the constitution”).

profit restores the rights and privileges so forfeited under division (A)(1) of this section, but a pardon shall not release the person from the costs of a conviction in this state, unless so specified. (Footnote and emphasis added.)

The phrase “office of honor, trust, or profit” has not been statutorily defined for purposes of R.C. 2961.01. Nevertheless, the phrase, as used in the Revised Code, has been construed to include public positions in which the incumbent receives compensation for independently exercising a portion of the sovereignty of the state. *See* 1992 Op. Att’y Gen. No. 92-067 at 2-276; 1991 Op. Att’y Gen. No. 91-001 at 2-4 and 2-5; 1963 Op. Att’y Gen. No. 3548, p. 58, 61. *See generally* R.C. 1.42 (phrases that have acquired a particular meaning shall be construed accordingly).

Because a person serving as a township trustee receives compensation for independently exercising a portion of the sovereignty of the state, *see* R.C. 503.01; R.C. 505.01; R.C. 505.24, the position of township trustee is an “office of honor, trust, or profit” for purposes of R.C. 2961.01. Thus, R.C. 2961.01 bars a person who has been convicted of felony domestic violence under the laws of Ohio and who has not been granted a full pardon by the Governor or had his conviction reversed or annulled from holding the office of township trustee.

The person may, however, be restored the privilege of holding the office of township trustee pursuant to certain provisions of statute.³ R.C. 2967.16(C)(1) states:

Except as provided in division (C)(2) of this section,⁴ the following prisoners or person *shall be restored to the rights and privileges forfeited by a conviction*:

(a) A prisoner who has served the entire prison term that com-

³ R.C. 2953.33(A) sets forth provisions governing the restoration of rights and privileges forfeited by a person who has been convicted of a felony under the laws of Ohio when the person has had the record of his conviction sealed under R.C. 2953.32. It is unnecessary for us to consider in this opinion whether R.C. 2953.33(A) restores the privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, since you are concerned with a situation in which the person has not had the record of his conviction sealed.

⁴ R.C. 2967.16(C)(2)(c) states that R.C. 2967.16(C)(1) does not restore a prisoner or person to the privilege of holding a position of honor, trust, or profit if the prisoner or person was convicted of or pleaded guilty to committing on or after May 13, 2008, certain felony offenses. The offense of felony domestic violence is not listed among the felony offenses enumerated in R.C. 2967.16(C)(2)(c). The exception set forth in R.C. 2967.16(C)(2)(c) thus does not prohibit the restoration of the privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, to a person convicted of felony domestic violence under the laws of Ohio.

prises or is part of the prisoner's sentence and has not been placed under any post-release control sanctions;

(b) A prisoner who has been granted a final release by the adult parole authority pursuant to division (A) or (B) of this section;

(c) A person who has completed the period of a community control sanction or combination of community control sanctions, as defined in [R.C. 2929.01],⁵ that was imposed by the sentencing court. (Footnotes and emphasis added.)

Accordingly, any person convicted of a felony under the laws of Ohio who satisfies the conditions set forth in R.C. 2967.16(C)(1) or its predecessors⁶ is restored the privilege of holding the office of township trustee.

Whether a person convicted of a felony has been restored the privilege of holding an office of honor, trust, or profit, which had been forfeited by operation of R.C. 2961.01, is a question of fact that must be addressed by local officials or, ultimately, the courts. *See* 1983 Op. Att'y Gen. No. 83-057 at 2-232 (the Attorney General does not serve as a fact-finding body). Therefore, a person who has been convicted of felony domestic violence under the laws of Ohio and who has not been granted a full pardon by the Governor or had his conviction reversed or annulled or the record of his conviction sealed may not hold the office of township trustee unless he has had the privilege of holding an office of honor, trust, or profit, which had

⁵ As used in R.C. 2967.16(C)(1)(c), a "community control sanction" is "a sanction that is not a prison term and that is described in [R.C. 2929.15, R.C. 2929.16, R.C. 2929.17, or R.C. 2929.18] or a sanction that is not a jail term and that is described in [R.C. 2929.26, R.C. 2929.27, or R.C. 2929.28]. 'Community control sanction' includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004." R.C. 2929.01(E).

⁶ With the enactment of Am. H.B. 372 on March 31, 1881, which is reprinted in 1881 Ohio Laws 89, "the General Assembly made it possible for a felon to be restored the privilege of holding public office if certain statutory conditions, which now are set forth in R.C. 2967.16(C), were satisfied." 2006 Op. Att'y Gen. No. 2006-030 at 2-286; *see also* 1995-1996 Ohio Laws, Part VI, 10752, 11099 (Am. Sub. S.B. 269, eff. July 1, 1996) (uncodified section three) ("[t]he provisions of the Revised Code in existence prior to July 1, 1996, shall apply to a person upon whom a court imposed a term of imprisonment prior to that date and, notwithstanding [R.C. 1.58(B)], to a person upon whom a court, on or after that date and in accordance with the law in existence prior to that date, imposes a term of imprisonment for an offense that was committed prior to that date"); R.C. 2967.021(A) (R.C. Chapter 2967, "as it existed prior to July 1, 1996, applies to a person upon whom a court imposed a term of imprisonment prior to July 1, 1996, and a person upon whom a court, on or after July 1, 1996, and in accordance with law existing prior to July 1, 1996, imposed a term of imprisonment for an offense that was committed prior to July 1, 1996").

been forfeited by operation of R.C. 2961.01, restored to him, as provided in R.C. 2967.16(C)(1) or its predecessors.

In conclusion, it is my opinion, and you are hereby advised that a person who has been convicted of felony domestic violence under the laws of Ohio and who has not been granted a full pardon by the Governor or had his conviction reversed or annulled or the record of his conviction sealed is barred by R.C. 2961.01 from holding the office of township trustee unless he has had the privilege of holding an office of honor, trust, or profit restored to him, as provided in R.C. 2967.16(C)(1) or its predecessors.