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FORFEITURE OF OFFICE—COUNTY SHERIFF—ELECTED TO OFFICE TO RUN FROM JANUARY, 1945 TO JANUARY, 1949—FORFEITED OFFICE—CONVICTED OF VIOLATION OF SECTION 12935 G. C.—NOT INELIGIBLE FOR NOMINATION AND ELECTION TO OFFICE OF SHERIFF IN 1952 ELECTION.

SYLLABUS:

A county sheriff who was elected to the office of sheriff in 1944 for a term to run from January, 1945 to January, 1949, and who, during such term, forfeited his office by virtue of being convicted of violating the terms of Section 12935, General Code, is not thereby rendered ineligible for nomination and election to the office of sheriff in the 1952 election.

Columbus, Ohio, June 10, 1952

Hon. W. C. Pyers, Prosecuting Attorney
Holmes County, Millersburg, Ohio

Dear Sir:

This will acknowledge receipt of your letter in which you request my opinion as to the right of a former sheriff of Holmes County who, in 1946 forfeited his office by virtue of being convicted of violations of Section 12935, General Code, now to run for the office of sheriff.

It appears from your letter that this man was elected sheriff in November, 1944 and assumed office on the first Monday of January, 1945 for a term to expire on the first Monday of January, 1949. In 1946 he was indicted for violating Section 12935, General Code, and plead guilty. In compliance with the provisions of this section, which provide that in case of conviction the county officer so convicted shall "forfeit his office," the journal entry in such criminal case so provided.

It now appears that this man was a candidate for nomination for sheriff in the May, 1952 primary and received a majority of the votes cast by his party. Your specific question is whether his name may legally be placed on the ballot in November and whether, if elected, he could hold such office.

Section 12935, General Code, reads as follows:

"Whoever, being a county officer receives or is paid any part of the compensation of a deputy, assistant, clerk, bookkeeper or other employe, or a fee or reward for appointing him to such position, shall be fined not more than five hundred dollars or imprisoned not more than one year, or both, and *forfeit his office.*"
(Emphasis added.)

The general rule of law on this subject matter appears to be well stated in 42 American Jurisprudence, page 925, as follows:

"* * * It is apparent, then, that in some instances ineligibility of a particular person to hold office may be predicated upon the same cause that occasioned his suspension or removal. But the question here is whether the suspension or removal of itself operates to disqualify one from holding the same or another office. Undoubtedly the framers of the law can attach such ineligibility to suspension or removal from office. But where they have not done so, where there is no constitutional or statutory declaration of ineligibility for such cause, the courts may not impose the disability. * * *"

I find no sections of the Ohio Constitution or the Ohio statutes providing generally that all forfeitures of office for cause shall render the official so removed ineligible for future election to the same office. Likewise, I find no provisions rendering ineligible for future election a person who forfeits his office by reason of conviction of violating Section 12935, General Code. As indicative of the fact that had the framers of the Con-

stitution and the members of the Legislature intended such a result, they could and would have so provided, reference might be made to a few provisions of the Constitution and the statutes by way of contrast.

Article II, Section 23 of the Ohio Constitution, authorizing the impeachment of state officers and judges, provides that the penalty may include not only removal from office, but "disqualification to hold any office, under the authority of this State."

Under the provisions of Section 12824, General Code, a person "convicted under the next preceding section is disqualified from holding any public office or appointment under this state." Section 12917, General Code, provides that "A person convicted under the next preceding section shall be incapable of holding an office of honor, profit or trust for seven years thereafter."

Section 13458-1, General Code, prohibits a person convicted of a felony in this state from holding an office of honor, trust or profit. Since the maximum penalty for violating Section 12935, General Code, is imprisonment for not more than one year, it is apparent, under the provisions of Sections 12370 and 12372, General Code that the violation of Section 12935 is a misdemeanor and is not a felony. The prohibition contained in Section 13458-1, therefore, has no application to the facts in this matter.

From an examination of the Election Laws of Ohio, I find no provision which would prohibit the person in question from being nominated for the office of sheriff in the May, 1952 primary, or prohibit him from serving as sheriff if elected at the November, 1952 election. The only reference in the election laws to a prohibition from occupying the office to which elected is contained in Section 4785-189, General Code, which provides in part as follows:

"* * * A candidate nominated or elected to an office whose nomination or election thereto has been annulled and set aside by reason of any offense specified in this act shall not, during the period fixed by law occupy or perform the duties of such office or be appointed to fill any vacancy in such office. * * *"

Even here it will be noted that the prohibition is only against the occupancy of the office during the period fixed by law, which, of course, would be the term of office to which elected. This statute does not pro-

hibit a person from being elected at a future election for a separate and distinct term of office.

The specific statutory prohibition contained in Section 4785-189, General Code, appears to be in accord with the general rule prohibiting the filling of an unexpired term resulting from a forfeiture of the office for cause with the person so removed from office. This general rule is stated in 42 American Jurisprudence, page 925, as follows:

“* * * The cases, with some exceptions, hold that a removal from office bars the removed officer from an election or appointment to fill the vacancy for the unexpired term, but that it does not disqualify him to take some other office or to be elected or appointed to a new term of the same office. * * *”

While there do not appear to be any Ohio cases squarely in point on the facts here involved, the Supreme Court, in the case of *State, ex rel. Voga v. Donahey*, 108 Ohio St., 440, held that the right conferred by statute to remove officers for cause must be for a cause which arose during his term and subsequent to the exercise of the power to elect vested in the electors. This same principle was re-affirmed by the Supreme Court in the case of *McMillen v. Diehl*, 128 Ohio St., 212.

Based upon this same line of reasoning, it would seem to follow that a man elected to the office of sheriff in November, 1952 could not be removed therefrom by virtue of actions which he had taken in 1946.

In specific answer to your question, it is my opinion that a county sheriff who was elected to the office of sheriff in 1944 for a term to run from January, 1945 to January, 1949, and who, during such term, forfeited his office by virtue of being convicted of violating the terms of Section 12935, General Code, is not thereby rendered ineligible for nomination and election to the office of sheriff in the 1952 election.

Respectfully,

C. WILLIAM O'NEILL

Attorney General