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SELECTIVE SERVICE ACT — RELIGIOUS OBJECTORS — NO
PROVISION IN OHIO FOR DISFRANCHISEMENT OF PER-
SONS CONVICTED OF VIOLATING THE ACT.

SYLLABUS:

There is no provision in Ohio for the disfranchisement of persons convicted of violating the Selective Service Act.

Columbus, Ohio, May 25, 1950

Hon. Charles F. Sweeney, Secretary of State
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I am enclosing herewith a photostat copy of a letter dated November 8th, 1949, signed by William E. Rostron, Jr., 941 Massachusetts Avenue, N. W., Washington, D. C.

“You will note Mr. Rostron is representing the National Service Board for Religious Objectors and has submitted questions in his letter relative to the voting rights of a person in Ohio who has been convicted of violating the Selective Service Act.

“Since the questions set out in Mr. Rostron’s letter are very important and are questions that have often been asked of this office, I am earnestly requesting that you render me a formal Opinion to the questions set out in the photostat copy of letter enclosed.”

The letter referred to in your communication inquires if a person would be disfranchised in Ohio because of conviction under the Selective Service Act.

A review of the provisions of the Selective Service Act, United States Code, Title 50, Section 311, Offenses and Punishment, read as follows:

“Any person * * * upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment, * * *.”

This punishment, it is plain to see, does not carry with it a forfeiture of citizenship clause, but merely provides for fine and imprisonment, or both.

A search of the statutes of Ohio fails to disclose any statute covering violations of the Selective Service Act. Therefore, any conviction under the provisions of the Selective Service Act, as far as Ohio is concerned, would be a conviction under the federal court system as set out in the Act itself.

The right to vote in Ohio is given in Article V, Section 1 of the Ohio Constitution, which reads as follows:

“Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.”

Amendment XIV, Section I of the Constitution of the United States provides the qualifications of a citizen of the United States. It reads in part as follows:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. * * *”

Therefore, any person born or naturalized in the United States, if a qualified resident of this State according to its Constitution and laws, is entitled to vote in this state, unless this right to vote has been removed as a consequence of punishment or other operation of law.

Section 13458-1 of the General Code of Ohio provides, in the following language, for the disfranchisement of persons convicted of felony in this state:

“A person convicted of a felony in this state, unless his conviction is reversed or annulled, shall be incompetent to be an elector or juror, or to hold an office of honor, trust or profit. The pardon of a convict shall effect a restoration of the rights and privileges so forfeited or they may be restored as otherwise provided by law, but a pardon shall not release a convict from the costs of his conviction, unless so ordered.”

Section 13458-2, General Code, provides for the disfranchisement of a person convicted by the laws of another state under certain conditions. The language of that section reads as follows:

“A person who has been imprisoned in the penitentiary of any other state of the United States, under sentence for the commission of a crime punishable by the laws of this state by imprisonment in the penitentiary, is incompetent to be an elector or juror, or hold an office of honor, trust or profit within this state unless he has received a pardon from the Governor of the state in which he was imprisoned.”

Section 12372 of the General Code provides the definition of a “felony” in Ohio. It reads as follows:

“Offenses which may be punished by death, or by imprisonment in the penitentiary, are felonies; all other offenses are misdemeanors. * * *”

In Opinion No. 4650, Opinions of the Attorney General for 1932, Volume II, page 1130, the third branch of the syllabus reads as follows:

“The language ‘convicted of a felony in this state’ as used in Section 13458-1, General Code, with reference to the restoration of rights of citizenship, means ‘convicted by the courts of Ohio, of a felony.’”

There is no reason to presume that the words in question “convicted of a felony in this state” mean anything other than what they say in plain simple language, or in the language as expressed in the above quoted syllabus, and that such language means, in all cases wherein Section 13458-1 is applicable, “convicted of a felony by the courts of Ohio.”

In Opinion No. 244, Opinions of the Attorney General for 1927, Volume I, page 421, Section 12391 of the General Code is interpreted. This section is in the same wording as the present Section 13458-2 of the General Code, and the same interpretation is applicable. In this opinion, at page 422, the then Attorney General stated in part, as follows:

“By its terms Section 12391 applies to persons who have been imprisoned in sister states and makes provision for the disfranchisement of such persons when the crime of which they were convicted is a ‘crime punishable by the laws of this state by imprisonment in the penitentiary.’ No provision whatever is made with reference to persons who have been imprisoned in Federal penitentiaries for crimes denounced by the laws of the United States, and this statute, being penal in its nature, the application thereof can not be extended beyond the plain language used therein.”

In Opinion No. 242, found in the same volume of Opinions of the Attorney General for 1927, at page 412, the first branch of the syllabus reads as follows:

“Since there is no federal statute depriving a person convicted of a felony denounced by the Federal Penal Code of his United States citizenship, with a consequent forfeiture of citizenship in Ohio, and since there is no Ohio statute making provision for the forfeiture of citizenship of a person so convicted, a person who has served a term of imprisonment in the federal prison at Atlanta for the commission of a felony under the laws of the United States is still a citizen of the United States and of the State of Ohio.”

The language of the above quoted Constitutional provisions, statutes and the opinions of the Attorney General, are clearly applicable to the inquiry that you have submitted to me for an opinion.

It is clearly set out in previous opinions that Section 13458-1, General Code, provides only for the disfranchisement of persons convicted of a felony in this state and that Section 13458-2, General Code, provides only for the disfranchisement of persons imprisoned in the penitentiaries of other states for crimes that would be felonies in Ohio.

It is, therefore, my opinion that there is no provision in Ohio for the disfranchisement of persons convicted of violating the Selective Service Act.

Respectfully,

HERBERT S. DUFFY,
Attorney General.