

4650.

ELECTION OFFICER—PERSON CONVICTED OF CRIME MAY NOT
SERVE AS SUCH—IMMATERIAL THAT RIGHTS OF CITIZENSHIP
HAVE BEEN RESTORED—SECTION 13458-1, G. C. CONSTRUED.

SYLLABUS:

1. *By reason of the provisions of Section 4785-26, General Code, no person who has ever been convicted of a crime can be an election official.*
2. *The provisions of Section 4785-26, General Code, prevent a person who has been convicted of a crime, but whose rights of citizenship have been restored by compliance with the provisions of Sections 2161, 2162, 13458-1 and 13458-2, General Code, from becoming an elective official.*
3. *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."*

COLUMBUS, OHIO, September 24, 1932.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, as follows:

"Section 4785-26 of the Ohio General Code provides in part, that 'All judges and clerks shall be qualified electors. No person who has been convicted of a crime * * * shall serve as an election officer.'

Section 13458-1 of the Ohio General Code provides in part that

'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 * * *.'

The following questions have arisen: Does the serving of a sentence imposed due to the commission of a crime remove the inhibition of Section 4785-26, or does the fact of conviction for crime disqualify a person for subsequent service as an election officer?

Referring to that part of Section 13458-1, reading as follows:

'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.'

What is meant by the statement 'as otherwise provided by law'?

Further referring to Section 13458-1, does the phrase 'convicted of a felony in this state' refer to the place of conviction and does it include a conviction brought about in this state for an offense against federal laws?"

In reply to your first inquiry, it is necessary to examine earlier statutes with reference to qualifications of election officers. The qualifications of an election registrar, judge or clerk, prior to 1929, were set forth in the then existing section 4882, General Code; that is, he "must be an elector of such city, able to read the English language understandingly and write it readily and fairly."

During the year 1929 the legislature enacted Section 4785-26, General Code (113 O. L., 307) setting forth the qualifications of judges and clerks of elections and repealed former Section 4882, General Code, using the following language in describing such qualifications:

"shall be qualified electors. *No person who has been convicted of a crime, or who is unable to read and write the English language readily * * **" (Italics the writer's).

This section was amended in 1931 in other respects, but the language quoted above remained unchanged. (114 O. L., 684).

Bearing in mind that the object of all interpretation of statutes is to discover the intent of the legislature in the enactment of the law, what was the purpose or intent of the legislature in repealing Section 4882, General Code, supra, and enacting Section 4785-26, General Code, with the attendant change of language? It is not to be presumed that the legislature changed the language of this section without intending to make a similar change in the meaning of the statute. (*Keifer vs. State*, 106 O. S., 285; *Board of Education vs. Board of Education*, 102 O. S., 108).

The qualifications of an election judge or clerk were specified under the earlier law; viz:

First, he must be an elector.

Second, he must be able to read the English language understandingly, and write it readily and fairly.

Third, he must not be a candidate for an office for which the electors in the precinct cast their votes at the election of which he is to be an official.

Under the first requirement of the former law it was necessary that he be a citizen and an elector. An examination of the statutes discloses that a person who has been convicted of a felony is no longer an elector, unless he shall have been pardoned or has had his citizenship and other rights restored in the manner provided by law. (See Sections 2126, 2161, 13458-1 and 13458-2, General Code.) It is therefore evident that under the former statute one who had been convicted of a felony, and whose rights had not been restored could not have been an election official. However, in Section 4785-26, General Code, an additional requirement is placed upon prospective candidates for election officials.

"*No person who has been convicted of a crime * * * shall serve as an election officer.*"

As stated by Marshall, C. J., in *Stanton vs. Realty Company*, 117 O. S., 345, 349:

"It is a general rule of interpretation of statutes that the intention of the legislature must be determined from the language employed, and when the meaning is clear, the *courts have no right to insert words not used, or to omit words used*, in order to arrive at a supposed legislative intent, or *where it is possible to carry the provisions of the statute into effect according to its letter.*" (Italics, the writer's.)

See also *Smith vs. Buck*, 119 O. S., 101, 103; *Village of Elmwood Place vs. Schangle*, 91 O. S., 357; *Slingluff vs. Weaver*, 66 O. S., 621; *Woodbury & Co. vs. Berry*, 18 O. S., 456. Or, as stated by Scott, J., in the case of *Medical College vs. Ziegler*, 17 O. S., 52, 68:

"The rules of construction favor an interpretation which will give effect to every part of an enactment."

Since, under the statute which was repealed, a person who had been convicted of a felony, could not be an election officer unless his rights as an elector had been restored in the manner as hereinbefore mentioned, and since it is never presumed that the legislature uses meaningless words and phrases in the enactment of a statute, I am inclined to the view that the intent of the legislature was to provide as a qualification for the office of election official, that the candidate shall never have been convicted of a crime, as distinguished from a person who has lost his rights as an elector by reason of his having been convicted of a crime and thereafter such rights have been again restored in the manner provided by law. To hold otherwise, it would be necessary to rule the language quoted above, from Section 4785-26, General Code, to be meaningless.

Relative to your second inquiry with respect to the meaning of the language "or they may be restored as otherwise provided by law," I call you attention to the provisions of Sections 2161 and 2162, General Code. The first of such sections provides that where a convict has served his term without unexcused infractions of the prison rules and is released, he shall receive a certificate of good conduct from the warden, which entitled him to a certificate from the Governor of the State, restoring to him the rights and privileges which he lost by reason of his conviction. Such section reads:

"A convict who has served his entire term without a violation of the rules and discipline, except such as the board of managers has excused, shall be restored to the rights and privileges forfeited by his conviction. He shall receive from the governor a certificate of such restoration, to be issued under the great seal of the state, whenever he shall present to the governor a certificate of good conduct which shall be furnished him by the warden."

Section 2162, General Code, provides that even though a convict is not entitled to a restoration of his rights by virtue of Section 2161, General Code, if he shall conduct himself in an exemplary manner for a period of twelve months after his release, he may present to the Governor a certificate as to such fact, signed by at least ten good and well known citizens of the place where he resided during such period; which certificate is prepared as set forth in such section, and he shall have his rights restored. Section 2162, General Code reads as follows:

"A convict not entitled to restoration under the next preceding section, having conducted himself in an exemplary manner for a period of not less than twelve consecutive months succeeding his release, may present to the governor a certificate to that effect signed by ten or more good and well known citizens of the place where he has resided during such period. The good standing of such citizens and the genuineness of their signatures must be certified to by the probate judge of the county where they reside. Such convict shall be entitled to a restoration of his rights and privileges, as provided for in the next preceding section."

I find no other provisions of statute for restoration of citizenship which could be referred to in such section and I therefore conclude that the language

"as otherwise provided by law" as used in Section 13458-1, General Code, means the same as though it read "as provided in Sections 2161 and 2162, General Code."

Your third inquiry is as to the meaning of the words "convicted of a felony in this state" as such language is used in Section 13458-1, General Code. It must be borne in mind that there are no common law crimes or felonies in Ohio. *Key vs. Vattier*, 1 Oh., 132; *Winn vs. State*, 10 Oh., 345; *Allen vs. State*, 10 O. S., 287; *Smith vs. State*, 12 O. S., 466, 469; *Mitchell vs. State*, 42 O. S., 383; *Toledo Disposal Co. vs. State*, 89, O. S., 230. In other words an act is not a felony in this state unless there is some statute in Ohio making such act a felony, that is the statute must make such act punishable by imprisonment in the penitentiary or death. (Section 12372, General Code, *McKelvy vs. State*, 87 O. S., 1).

In the case of *State ex rel. Beckman vs. Bowman*, 38 O. App., 237, the Court of Appeals of Hamilton County had under consideration the question as to whether a policeman who had been discharged by reason of "having been convicted of a felony" was entitled to share in the police pension fund. Section 45 of the Rules and Regulations concerning such fund provided, among other things, that a person who has been discharged for "being convicted of a felony" should not be entitled to benefits from such fund. From the facts it appears that the plaintiff had been convicted in the Federal Court of a conspiracy to defraud the United States under Section 37 of the Penal Code of the United States (Title 18, Section 88, U. S. Code) which might be punished by a sentence of not more than two years. It was contended by the plaintiff that the rule meant a felony as defined by the Ohio statute (Section 12372, General Code) and that since the act complained of might be punishable under the Federal Law by imprisonment in the Federal prison and not in the penitentiary it was not a felony within the meaning of Section 45, of the Rules and Regulations. The court held, as stated in the fourth paragraph of the syllabus:

"'Felony,' within regulations forfeiting policeman's right to pension on conviction thereof, does not mean felony under Ohio's laws, but under laws of jurisdiction where committed."

In Section 13458-1, General Code, the language used is "convicted of a felony in this state" and not "convicted of a felony." If the words "in this state" were not added, the *Bowman* case would point to the conclusion that the statute included the conviction of a felony under the federal laws. Your inquiry raises the legal question as to the meaning of the words "in this state"; or, in other words, your inquiry is, does such language mean:

First, convicted within the territorial boundaries of this state of a felony, or

Second, convicted in any jurisdiction, of a crime which amounts to a felony under the Ohio statute.

In Section 13458-2, General Code, which is a part of the same Act as Section 13458-1, General Code, the legislature has provided that any person who has been imprisoned in the penitentiary of any other state or the United States for the commission of a "crime punishable by the laws of this state by imprisonment in the penitentiary," shall forfeit his rights as an elector until he shall have been pardoned by the Governor of the state where he was imprisoned. Since the legislature in other portions of the same act has made specific provision for disfranchisement of a person convicted and imprisoned by the Federal Court, when the

offense amounts to a felony under the Ohio law it would be unreasonable to presume that the legislature intended that the language contained in Section 13458-1, General Code, should be extended by implication to include matters that are specifically provided for in Section 13458-2, General Code.

It is therefore my opinion that the legislative intent expressed in Section 13458-1, General Code, is only to disfranchise those who are convicted of a felony by a state court within the judicial jurisdiction of the Ohio courts. The further language of this section indicates that such was the legislative intent, since it provides: "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*" and especially since no provision is made by law for the restoration of the right of franchise when a person is convicted by the federal court or the courts of another state except by pardon. See Sections 2161, 2162, 13458-1, and 13458-2, General Code; Opinions of the Attorney General for 1927, page 412, and Opinions of the Attorney General for 1927, page 421.

Specifically answering your inquiries it is my opinion that:

1. By reason of the provisions of Section 4785-26, General Code, no person who has ever been convicted of a crime can be an election official.

2. The provisions of Section 4785-26, General Code, prevent a person who has been convicted of a crime, but whose rights of citizenship have been restored by compliance with the provisions of Sections 2161, 2162, 13458-1, and 13458-2, General Code, from becoming an elective official.

3. 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."

Respectfully,

GILBERT BETTMAN,

Attorney General.

4651.

APPROVAL, FOUR LEASES TO RESERVOIR LANDS AT INDIAN LAKE
AND PORTAGE LAKES.

COLUMBUS, OHIO, September 27, 1932.

HON. EARL H. HANEFELD, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—The Division of Conservation in your department has submitted to me for examination and approval a number of reservoir land leases recently executed by the Conservation Commissioner under the authority of section 471, General Code, as said section is amended in the Conservation Act.

The leases here in question designated with respect to the lessees named therein, the location of the properties leased and the respective valuation thereof are as follows:

Name.	Location.	Valuation.
J. A. Poss	Indian Lake	\$300.00
Alice G. Riegel	Indian Lake	400.00
Bertie Clark	Indian Lake	833.34
Mrs. Merle E. Wolfe	Portage Lakes	1200.00

Upon examination of the leases above referred to, I find that the same have