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1. CRIME—PERSON CONVICTED OF FEDERAL CRIME IN FEDERAL COURT—DOES NOT LOSE THE RIGHT TO VOTE IN OHIO.
2. RESIDENT QUALIFICATIONS OF ELECTOR—MATTER OF FACT—DETERMINED UNDER SECTION 4785-31 G. C.

SYLLABUS:

1. A person convicted of a federal crime in a federal court does not lose his right to vote in Ohio.
2. Resident qualifications of an elector are a matter of fact and should be determined in accordance with Section 4785-31, General Code.

Columbus, Ohio, February 17, 1950

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

Dear Sir:

Your request for my opinion reads as follows:

“We would appreciate receiving a ruling from you regarding voting privileges in Ohio.

“We have a man whose home is in Bellevue, Ohio, who was denied the privilege of voting in the last general election. His home has been in Bellevue for a number of years. He still maintains living quarters in Bellevue, consisting of two rooms and furniture in the rooms including a bed. However, he has been

employed in Cleveland, Ohio, for the past two years. He stays in Cleveland during the week and returns to his quarters in Bellevue over weekends, and receives mail in Bellevue.

“This man is on federal parole at the present time, having been convicted in federal court for violation of the banking laws, he having been an employee of the bank in Bellevue previously. He served some time in a federal institution in Lewisburg, Pennsylvania, and as I said before, is now on parole.

“He has never attempted to register or vote in Cleveland, and has always voted in Bellevue up to the time of the last election when he was denied the privilege by the election officials.

“We would appreciate a ruling from you, as it will be a guide to us in the future. We have always been under the impression that being on parole from a federal institution would not incapacitate the individual from voting in Ohio, and we were always of the opinion that a person could vote where he had always lived as long as he maintains residence there and as long as he has not voted in any other place.

“Your ruling will be appreciated.”

Article V, Section 4 of the Constitution of Ohio provides as follows:

“The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of bribery, perjury, or other infamous crime.”

Section 13458-1, General Code, states as follows:

“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.”

This statute prohibits a person convicted of a felony in Ohio courts from voting. See Opinion No. 4650, Opinions of the Attorney General for 1932. Section 13458-2, General Code, states:

“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.”

This statute prevents a person who has been imprisoned in the prison of a sister state for the commission of a crime punishable by the laws of this state by imprisonment in the penitentiary from voting. Both of these statutes are in the nature of penal statutes and should be strictly construed.

The Congress of the United States has enacted no general statute that would deprive a person convicted of a felony of his citizenship. The legislature of Ohio has provided that persons convicted of felonies in Ohio courts and those imprisoned in prisons of sister states for crimes punishable in Ohio by imprisonment in a penitentiary shall not have the right to vote unless they have been pardoned. There is no provision in Ohio law that would disfranchise a person convicted of a federal crime in a federal court. In Opinion No. 242, Opinions of the Attorney General for 1927, Volume I, branch one of the syllabus provides 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.”

In view of the above, it is my opinion that a person convicted of a federal offense in a federal court does not lose his right to vote in Ohio.

The resident qualifications of voters are contained in Section 4785-30, General Code, which reads in part as follows:

“No person shall be permitted to vote at any election unless he shall have been a resident of the state one year, of the county forty days and of the voting precinct forty days next preceding the election at which he offers to vote, \* \* \*”

The rules for determining residence are contained in Section 4785-31, General Code, which reads in part as follows:

“All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may be applicable:

“a. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

“b. A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this state, for temporary purposes only, with the intention of returning. \* \* \*

“i. All questions of the right to vote shall, except as otherwise provided herein, be heard and determined by the judges of election in the precinct where the question arises.

“j. The term ‘temporary purposes,’ as used in this section, shall be construed to permit a period of absence not in excess of three years.”

From the above it is apparent that the intention of the person determines whether or not he is a resident of a certain county. In the situation you cite it would appear that the intention of the person was to return to Bellevue. He went to Cleveland for “temporary purposes” only and for a period of less than three years. In case of doubt, the question shall be determined by the judges of the election in the precinct where the question arises.

In conclusion, therefore, it is my opinion that a person convicted of a federal crime in a federal court does not lose his right to vote in Ohio. I further believe resident qualifications of an elector are a matter of fact and should be determined in accordance with Section 4785-31, General Code.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.