

244.

GOVERNOR—HAS NO AUTHORITY TO RESTORE CITIZENSHIP TO A
PERSON CONVICTED OF CRIME AGAINST THE UNITED STATES.

SYLLABUS:

Section 2162 of the General Code of Ohio confers no authority on the Governor to restore citizenship to a person convicted of crime against the United States.

COLUMBUS, OHIO, March 28, 1927.

HON. VIC DONAHEY, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—I beg to acknowledge receipt of yours of March 24, 1927, reading as follows:

“Under Section 2162 of the General Code of this state the Governor has power and authority to issue a restoration to an ex-prisoner of the Ohio Penitentiary.

Has the Governor of Ohio the power and authority to issue restoration of citizenship to a person who has been incarcerated in a Federal penitentiary under the charge of obstructing the mails and has been duly released, said release having been effective March 8, 1922?”

I am of the opinion that the provision of Section 2162 of the General Code of Ohio apply only to convicts sentenced under the laws of the state of Ohio and that, therefore, the Governor of Ohio has no power or authority to issue restoration of citizenship to a person who has been incarcerated in a Federal penitentiary.

Congress has enacted no statute providing generally that the conviction of a felony would deprive the accused of the rights of citizenship although it has, in defining certain crimes and fixing the penalties therefor, provided that conviction of these particular crimes would make a person convicted of such crime ineligible to hold any office of honor, trust or profit under the government of the United States. See for example Sections 103, 110, 112, 117 and 128 of the Federal Penal Code.

Section 21 of the Act of March 3, 1865, Chapter 79, in providing that persons then occupying the status of deserter from the military or naval service, who should not return to the service within sixty (60) days from a specified date, should

“in addition to the other lawful penalties of the crime of desertion, be deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship and their rights to become citizens, and * * * to be forever incapable of holding any office of trust or profit under the United States.”

No such provision is contained in Section 197 of the Federal Penal Code, defining crime of “Assaulting Mail Custodian With Intent to Rob and Robbing Mail.”

Section 12390 of the General Code of the State of Ohio provides as follows:

“A person convicted of felony, unless his sentence 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 provided elsewhere by law, but a pardon shall not release a convict from the costs of his conviction unless so stated therein.”

Section 12391 G. C. provides:

"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 to hold an office of honor, trust or profit within this state, unless he has received a general pardon from the governor of the state in which he was imprisoned."

The legislative history of Section 12390 and the plain import of its terms, and the fact that by Section 12391 the legislature has made provision for the disfranchisement of persons convicted of felonies in sister states where such felony is punishable by imprisonment in the penitentiary by the laws of this state, clearly shows that Section 12390 applies only to persons convicted in the courts of Ohio for a felony denounced by the laws of Ohio.

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.

While under the laws of some of the other states (see *Cowan v. Prowse*, 93 Ky. 156; *Jones v. Board of Registrars*, 56 Miss. 76) it has been held that conviction in a Federal court for a crime against the United States carries with it forfeiture of civil rights in the particular state, yet I am of the opinion that under the laws of Ohio, imprisonment in a Federal penitentiary for the crime to which your letter refers does not carry with it the forfeiture of any rights of citizenship in Ohio. This is a matter which you may want to call to the attention of the legislature.

I am enclosing herewith a copy of Opinion No. 242, this day issued to Honorable L. E. Harvey, Prosecuting Attorney, Troy, Ohio, which refers to another phase of your question.

Respectfully,
EDWARD C. TURNER,
Attorney General.

245.

SPECIAL ASSESSMENTS—MONEY MAY BE BORROWED AND CERTIFICATES OF INDEBTEDNESS ISSUED IN ANTICIPATION OF COLLECTION.

SYLLABUS:

By virtue of the provisions of Section 5655 of the General Code money may be borrowed and certificates of indebtedness issued in anticipation of the collection of special assessments subject to the limitations contained in the statute.

COLUMBUS, OHIO, March 28, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent communication, which is as follows:

"We respectfully request your written opinion upon the following question.