Under the circumstances, I am clearly of the opinion that each dealer must, for each separate license period, furnish a separate bond in an amount discretionary with you, with the exception that each bond shall in no event be less than $10,000.00.

The same reasoning applies to the agent's bond and I feel that you should require a separate bond for each separate licensing period. You will note, however, that whereas the dealer's bond provides for a minimum amount, the provisions for an agent's bond fixes the maximum at $2,500.00. You cannot, therefore, require for any one licensing period a bond in excess of $2,500.00. Whatever amount may be reasonable in your determination should probably be required annually, although under the wording of the statute no minimum is fixed limiting your discretion.

You are accordingly advised that the renewal certificate form which you submit restricts the liability of the surety company to a maximum of $10,000.00 in any event and that you are therefore not warranted in accepting such form of renewal, but should require a separate bond from each dealer for each year in an amount not less than $10,000.00.

Respectfully,
EDWARD C. TURNER,
Attorney General.

242.

CITIZENSHIP—CONVICTION OF FEDERAL STATUTE—NOTARY PUBLIC.

SYLLABUS:

1. *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.*

2. *By virtue of Section* 120, *General Code, before a notary public is appointed the applicant must produce to the governor a certificate from a judge of the common pleas court, court of appeals or supreme court that such applicant is inter alia "of good moral character". Whether or not such an applicant is a person of good moral character is a question of fact, and it must be left to the wisdom and good conscience of a judge of one of the courts above enumerated to determine whether he can truly so certify. In determining this question due consideration should be given to the fact that the applicant had been convicted of a felony and had served a term of imprisonment in the federal prison at Atlanta. Such judge must be satisfied from his personal knowledge that the applicant is a person of good moral character.*

3. *Whether such person would be appointed rests in the discretion of the Governor, and the Governor cannot be mandamused to make such appointment.*

COLUMBUS, OHIO, March 28, 1927.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date reading as follows:

> "Several years ago a man by the name of John Doe of Troy, Ohio, was sentenced to the Federal Prison at Atlanta for attempting to rob the mail. He was released on parole and has been discharged.
>
> This Mr. Doe now wishes to become a Notary Public and exercise other

rights of citizenship in Ohio and I would like to inquire whether or not he has been restored to citizenship or whether he can be restored to citizenship if he secures a pardon from the President of the United States.

I have examined the Ohio law and fail to find any provision relating to Federal crimes. The law provides the manner in which a person convicted of a crime in Ohio or in another state may be restored to citizenship, but no reference is made to Federal crimes.

Your opinion on this point will be very much appreciated."

Your letter assumes that by reason of his conviction and subsequent imprisonment in the federal prison at Atlanta, Mr. Doe has lost his rights of citizenship in Ohio, and you ask, first, whether the release on parole and final discharge of Mr. Doe have served to restore Mr. Doe to citizenship; and, second, whether he can be restored to citizenship if he secures a pardon from the President of the United States.

At the English common law the conviction of a felony worked a total forfeiture of either lands or goods, or both; in fact, the definition of a felony as given by Blackstone, Book 4, page 94, is as follows:

> "So that, upon the whole, the only adequate definition of felony seems to be that which is before laid down, viz., an offense which occasions a total forfeiture of either lands or goods, or both, at the common law, and to which capital or other punishment may be superadded, according to the degree of guilt."

This definition of a felony does not apply in this country, Article 1, Section 12 of the Constitution of the United States providing that "no conviction shall work corruption of blood or *forfeiture of estate.*"

In the United States, and in most of the states, including Ohio, the meaning of the word "felony" is defined by statute, and the penalties and disabilities to be suffered by one convicted of a felony are fixed by statute.

Congress has enacted no statute providing generally that the conviction of a felony would deprive the accused of citizenship, although it has, in defining certain crimes and fixing the penalties therefor, provided that convictions of these particular crimes would make the 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. No such provision is contained in Section 197 of the Federal Penal Code defining the crime of "Assaulting mail custodian with intent to rob and robbing mail."

Article V, Section 4 of the Ohio Constitution provides that:

> "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."

It has been held by the Supreme Court of Ohio that this section "is not in itself a grant of power, but a limitation upon power otherwise generally granted", and that the object of such section "is to authorize the general assembly to award a punishment upon conviction of infamous crime, which will permanently exclude the criminal from voting and from holding office." *Mason* vs. *The State ex rel.* McCoy, 58 O. S., 30, 50 and 51.

In Sections 12390 and 12391, General Code, the legislature has provided as follows:

> "Sec. 12390. 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."

"Sec. 12391. 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, 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 show that such Section (Section 12390) applies only to persons convicted in the courts of Ohio for a felony denounced by the laws of Ohio. This section was first enacted in 1835 as part of an act entitled "An act providing for the punishment of crimes." Section 41 of such act reads as follows:

"That any person sentenced to be punished for any crime specified in this act, (when sentence shall not have been reversed or annulled), except under the third and twenty-fifth sections, shall be deemed incompetent to be an elector, juror or witness, or to hold any office of honor, trust or profit within this state, unless the said convict shall receive from the Governor of this state a general pardon, under his hand and the seal of the state, in which case said convict shall be restored to all his civil rights and privileges: Provided, however, That such pardon shall not release such convict from the costs of his conviction."

It has been several times amended, but the fact that the section still provides that a "pardon shall not release such convict from the costs of his conviction" unless so stated therein shows that it was intended to apply only to convictions in Ohio courts, for it is obvious that the legislature would have no interest in the court costs of the courts of other states or of the United States.

By its terms Section 12391 of course applies to persons who have been imprisoned in penitentiaries of 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 convicted in the United States courts of felonies denounced by the laws of the United States, and in the absence of some such provision, these statutes being penal in their nature, the application thereof cannot be extended beyond the plain language used in such sections. That sections of this nature must be strictly construed is so well settled that citation of authority is unnecessary. If persons do not come within the spirit of the law the law does not apply, nor does the statute apply to persons not coming within the *letter* of the law.

It may well be that the legislature did not intend to make any such provisions applying to persons convicted of violation of federal statutes. The United States has no general criminal jurisdiction in the sense that states have such jurisdiction, the crimes defined in the Federal Penal Code being for the most part crimes affecting the United States Government, or activities exclusively under its control and within its jurisdiction, or crimes committed upon the high seas or other waters within the admiralty and maritime jurisdiction, or military reservations and like places.

From what has been said it appears that Mr. Doe has never been deprived of his

United States citizenship and that he is still a citizen of Ohio. His citizenship not having been taken away, it of course cannot be restored. That Section 12390 relates exclusively to persons convicted in Ohio courts of a felony defined by Ohio laws is supported by the provisions of Sections 2161 and 2162 of the General Code, which read as follows:

> "Sec. 2161. 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."
>
> "Sec. 2162. 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."

These sections are found in the chapter relating to the Ohio penitentiary. They, together with Section 2160, which provides for the release by the Board of Managers (now the Ohio Board of Clemency) of prisoners under a general sentence to the Ohio penitentiary, were enacted as a part of the same section of the same act passed on May 4, 1891 (88 v. 556). This fact and the plain terms of the sections themselves clearly show that such sections relate exclusively to person sentenced to the Ohio penitentiary by an Ohio court for a crime by the law of Ohio.

I therefore conclude that 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 this holding it is unnecessary to consider whether or not a person can be restored to citizenship if he secures a pardon from the President of the United States.

In so far as Mr. Doe's appointment to the office of Notary Public is concerned, your attention is directed to Sections 119 and 120 of the General Code relating to the appointment of Notaries Public and the certificate of qualification required to be presented to the Governor.

Section 119 reads in part as follows:

> "The governor may appoint and commission as notaries public as many persons as he may deem necessary who are citizens of this state, of the age of twenty-one years or over, and residents of the counties for which they are appointed; but citizens of this state of the age of twenty-one years or over, whose postoffice address is a city or village, situated in two or more counties of the state, may be appointed and commissioned for all of the counties within which such city or village is situated."

Section 120 provides:

"Before the appointment is made the applicant shall produce to the governor a certificate from a judge of the common pleas court, court of appeals, or supreme court, that he is of good moral character, a citizen of the county in which he resides, and possessed of sufficient qualifications and ability to discharge the duties of the office of notary public. No judge shall issue such certificate until he is satisfied from his personal knowledge that the applicant possesses the qualifications necessary to a proper discharge of the duties of the office, or until the applicant has passed an examination under such rules and regulations as the judge may prescribe."

By the terms of section 119 a person to be a Notary Public must be (1) a citizen of this state, (2) of the age of twenty-one years or over, and (3) a resident of one of the counties for which he is appointed. He is required to present to the Governor a certificate from a judge of the Court of Common Pleas, Court of Appeals or Supreme Court that he is (1) of good moral character, (2) a citizen of the county in which he resides, and (3) possessed of sufficient qualifications and ability to discharge the duties of the office to which he attains.

From what has been said it clearly appears that John Doe, the person of whom you write, is a citizen of the county in which he resides and of the state of Ohio.

Whether or not he be a person of good moral character, and whether he possesses sufficient qualifications and ability to discharge the office of Notary Public are questions of fact to be determined by a judge of one of the courts above enumerated. No hard and fast rule can be laid down as to what is "good moral character."

The definition of "good moral character" given by Corpus Juris is as follows:

"That status which attaches to a man of good behaviour and upright conduct. The words are general in their application, but they include all the elements essential to make up such a character; among these are common honesty and veracity, especially in all professional intercourse." 11 C. J., 290.

The fact that a person has been convicted of a felony by a United States Court and has served time in a federal prison is one to be considered in determining the moral character of the applicant. It has been held that in so far as the naturalization laws of the United States are concerned that a single instance of the commission of such a felony as murder, robbery, theft or perjury is sufficient to prevent admission to citizenship in the United States. See In re: *Spenser*, Case No. 13234, 22 Fed. Cas. 291. The court further goes so far as to hold that a subsequent pardon does not wipe out the fact of the commission of the crime, so that it cannot be made to appear on an application to be admitted to citizenship. The second and third head notes in this case read as follows:

"What constitutes good moral character may vary in some respects in different times and places, but a person who commits perjury does not behave as a man of good moral character and is not, therefore, entitled to admission to citizenship.

A pardon is prospective and not retrospective in its operation; and while it absolves the offender from the guilt of his offense and relieves him from the legal disabilities consequent thereon, it does not obliterate or wipe out the fact of the commission of the crime, so that it cannot be made to appear on an application to be admitted to citizenship."

In the opinion the court said as follows:

"What is a 'good moral character' within the meaning of the statute

may not be easy of determination in all cases. The standard may vary from one generation to another, and probably the average man of the country is as high as it can be set. In one age and country duelling, drinking and gaming are considered immoral, and in another they are regarded as very venial sins at most. * * *

Upon general principles it would seem that whatever is forbidden by the law of the land ought to be considered, for the time being, immoral, within the purview of this statute. And it may be said with good reason that a person who violates the law thereby manifests, in a greater or less degree, that he is not 'well disposed to the good order and happiness' of the country. * * *

There can be no question, then, but that a person who commits perjury has so far behaved as a man of bad moral character but it may be said that an alien who has otherwise behaved as a man of good moral character during a residence in the country of at least five years, ought not to be denied admission to citizenship on account of the commission in that time of a single illegal or immoral act. This suggestion is based upon the idea that it is sufficient if the behavior of the applicant was generally good—that the good preponderated over the evil. In some sense this may be correct. For instance, the law of the state prohibits gaming and the unlicensed sale of spirituous liquors. These acts thereby become immoral. But their criminality consists in their being prohibited and not because they are deemed to be intrinsically wrong—*mala in se*. Now, if an applicant for naturalization, whose behavior, during a period of five or more years, was otherwise good, was shown to have committed during that time either of those or similar crimes, I am not prepared to say that his application ought to be denied on account of his behavior. And yet it is clear that anything like habitual gaming or vending of liquors under such circumstances would constitute bad behavior—immoral behavior—and be a bar under the statute to admission to citizenship. *But in the case of murder, robbery, theft, bribery or perjury, it seems to me that a single instance of a commission of either of them is enough to prevent the admission.* The burden of proof is upon the applicant to prove 'to the satisfaction of the court' that during the period of his probation he has conducted himself as a moral man. But when the proof shows that he has committed an infamous crime, it is not possible, in my judgment, to find that his behavior has been such as to entitle him under the statute to receive the privilege and power of American citizenship." (Italics the writer's).

In so far as the subsequent pardon of the applicant was concerned, the court said:

> "The pardon has absolved him from the guilt of the act, and relieved him from the legal disabilities consequent thereupon. But it has not done away with the fact of his conviction. It does not operate retrospectively. The answer to the question: Has he behaved as a man of good moral character? must be still in the negative; for the fact remains, notwithstanding the pardon, that the applicant was guilty of the crime of perjury—did behave otherwise than as a man of good moral character."

On the other hand, one of the true objects of conviction and imprisonment of persons for crime is to work a reformation of the person convicted and make of him a law-abiding citizen; and it would be a harsh rule to say that in all cases a single conviction of a felony would forever stamp the person so convicted as one of bad moral character.

In this connection it should be noted that the legislature has not in Section 120,

supra, expressly provided that the judge must certify that the applicant has never been convicted of crime, but only that "he *is* of good moral character."

Whether or not Mr. Doe is a person of good moral character is a question of fact and it must be left to the wisdom and good conscience of the judge of the proper court to determine whether in view of all the circumstances, including the conviction and imprisonment, he can truly so certify.

Specifically answering your inquiry I am of the opinion that under the law as it stands today, if a judge of the proper court is *satisfied from his personal knowledge* that the applicant possesses the necessary qualifications, (which term includes good moral character) and so certifies, Mr. Doe will be eligible for appointment as a Notary Public. However, I am of the further opinion that the matter of appointment will still rest in the discretion of the Governor. If the Governor should refuse to make the appointment mandamus will not lie.

Respectfully,
EDWARD C. TURNER,
Attorney General.

243.

THIRD OFFENSE—CRABBE ACT—WHEN PROSECUTION MAY BE INSTITUTED AND MAINTAINED.

SYLLABUS:

A prosecution for a third offense, for violation of Sections 6212-13 *to* 6212-20, *General Code, may be instituted and maintained against a defendant when the first offense and second offense upon which the present prosecution is predicated were judgments upon pleas of guilty entered before a mayor's court.*

COLUMBUS, OHIO, March 28, 1927.

HON. HARRY K. FORSYTH, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of March 14, 1927, which reads as follows:

> "Since the rendering of the recent opinion by the Supreme Court of the United States affecting the jurisdiction of Mayors' Courts in this state, I desire your opinion as to the status of the defendant in the following case.
>
> The recent grand jury returned an indictment against one, Wiscal, charging a third offense under the Crabbe Act for selling liquor, said defendant having twice before pleaded guilty to the unlawful selling and possession of intoxicating liquors, having been fined in each of the prior cases $100.00 and costs. The first offense was committed in Logan county, the defendant having been arraigned before the mayor of Lakeview, Ohio, and there entered a plea of guilty to unlawful possession and transporting of liquors and having been fined $100.00 and costs. The second offense was committed in Shelby county, he having been arraigned in the mayor's court of Sidney, entered a plea of guilty and was fined $100.00 and costs. The last offense was committed in Sidney some time in February of this year and formed the basis of the third offense."

The question you present is whether or not a prosecution for a third offense, for violation of Sections 6212-13 to 6212-20, General Code, may be instituted and main-