

Opinion No. 491.

Citizenship—Felony, Conviction of Under Volstead Act—Suffrage—Elections—Registration.

HELD: A citizen of the United States who was convicted of a violation of the Volstead Act did not thereby lose his citizenship.

The constitutional and statutory provisions of Montana, relating to right of suffrage, relate only to conviction of felony under the laws of Montana.

Hence, the right to register for popular elections under the Montana laws exists unimpaired, and the continuance in force of the repeal of the Volstead Act could not possibly affect the right.

March 12, 1934.

We can best deal with the question upon which you desire to be advised by quoting from your letter as follows:

"Approximately two years ago there were filed in the office of the county clerk and recorder of Missoula County, certified copies of judgments rendered in the U. S. District Court, wherein the defendants were convicted of felonies for violations of the National Prohibition Act. As a consequence the names of these defendants were stricken from the registration lists. Several of those whose names were stricken have presented themselves and demanded to be regis-

tered as voters since the repeal of the 18th Amendment.

"I understand that the individuals have not been restored to citizenship by any order of the President of the United States unless this was attempted by some general order or pardon issued by him.

"Would you please give me your opinion as to whether the repeal of the National Prohibition Laws would change their status so as to entitle them to be registered to vote or whether their status has been changed by any general pardon from the President."

After a careful consideration of the law and the authorities it is our view that conviction of a violation of the National Prohibition Act, popularly known as the Volstead Act, did not result in or carry with it loss of citizenship. Under federal statutes it seems that desertion in time of war of which the accused is duly convicted by court-martial is the only crime that entails forfeiture of all rights of citizenship. (See Sections 11 and 12, Title 8, United States Code Annotated.)

How, then, is the situation affected, if at all, by the Constitution and laws of Montana? The amendment to Section 2 of Article IX of the Constitution, adopted by vote of the people at the general election held on November 8, 1932, reads as follows: "Every person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to

vote unless he has been pardoned or restored to citizenship by the Governor; provided, second that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this Constitution; provided, that after the expiration of five years from the time of adoption of this Constitution, no person except citizens of the United States shall have the right to vote."

Section 12263, Revised Codes 1921, provides: "The governor has power to restore to citizenship any person convicted of any offense committed against the laws of the state, upon cause being shown, either after the expiration of sentence, or after pardon."

It is worthy of note, perhaps, that the words "or restored to citizenship by the Governor," occurring in the amendment immediately after the words "unless he has been pardoned," are not found in the original section at all.

It goes without saying that the governor has nothing whatever to do with the case of a person convicted of a crime against the laws of the United States. The power to pardon such person is vested in the President. The governor may pardon or restore to citizenship a person convicted of a felony denounced by the laws of this state and when he does so such person, if possessed of the necessary qualifications otherwise, may then exercise the right of suffrage.

Since, then, a citizen of the United States who was convicted of a violation of the Volstead Act did not thereby lose his citizenship, and since the constitutional and statutory provisions above quoted relate only to conviction of a felony under the laws of Montana, whatever may be said of Section 2 of Article IX of the Constitution before being amended, it is clear, we think, that his right to register for popular elections exists unimpaired. (*United States v. Barnabo*, 24 Fed. Cas. No. 14,522). Other cases more or less in point are *Huber v. Rely*, 53 Pa. 112; *State v. Symonds*, 57 Me. 148, and *Gotcheus v. Matheson*, 58 Barb. 152.

There being no loss of citizenship, it is hardly necessary to add that either the continuance in force or the repeal of the Volstead Act would not possibly affect the right.