

Voter, Conviction of Felony Under United States Law Disqualifies. Elector, Conviction of Felony Disqualifies. Felony, Conviction of Disqualifies Voter.

Conviction of an offense under the United States law which subjects the offender to a punishment as for a felony under the state disqualifies such person from voting until he has been pardoned.

Helena, Montana, October 30, 1908.

Mr. Frank Conley,
Warden State Prison,
Deer Lodge, Montana.

Dear Sir:—

Your letter of the 28th inst. received, in which you request an opinion on the following proposition:

“Can a person who has been convicted of a felony under the laws of the United States vote at a state election in Montana without having been restored to citizenship by a pardon?”

There is no United States law that we know of which deprives a person convicted of an offense against the United States of the right to vote by reason of such conviction. However, the various states of the union have the authority to prescribe the qualifications of electors in their respective states so long as they do not conflict with the provisions

of the constitution of the United States. Under his authority the state of Montana, by Section 2 of Article IX of the State Constitution, has provided that no person convicted of a felony shall have the right to vote unless he has been pardoned, and Section 562, Revised Codes, contains the same provisions, while Section 565 of the Revised Codes provides that a person may be challenged on the ground of conviction of crime, and when so challenged that he must take the following oath:

"Do you swear (or affirm) that you have not been convicted of a felony?"

And Section 566 provides that in case a person has been so challenged, and asserts that he has been convicted of a felony and pardoned therefor, that he must exhibit his pardon or a certified copy thereof to the judges, whereupon the judges must administer the following oath:

"You do swear that you have not been convicted of any felony other than that for which a pardon is now exhibited?"

And if the person offering to vote takes this vote he is entitled to vote provided he has been properly registered.

In the case of *United States vs. Barnabe*, 14 Blatchford 74, the federal judge in construing the election law of New York held that a conviction for an offense committed against the laws of the United States did not deprive a person of the right to vote at a state election in New York, but this decision was based upon the particular wording of the New York statutes, which was as follows:

"That a person convicted of a felony under the laws of this state did not have the right."

The court held that the language, "under the laws of this state," clearly shows that the legislature only intended to disfranchise persons who had been convicted under the laws of the state of New York. On the other hand, the supreme court of Kentucky, in *Cowan vs. Prowse*, 19 S. W. 407, under a constitutional and statutory law the same as of this state, held that where a man had been convicted of a felony for violating a law of the United States, that he had no right to register and vote in the state of Kentucky until he had been pardoned by the president of the United States. And the supreme court of Mississippi, in *Jones vs. Board of Registrars*, 31 Am. Repts. 385, in construing a law of Mississippi which is similar to that of Montana, held the same as the Kentucky court.

The question has never been passed upon by the courts of this state so far as we know, but in our opinion our courts would probably hold the same as Kentucky and Mississippi, for the reason that our law simply provides that a person convicted of a felony shall not have the right to vote and it makes no distinction between a felony against the laws of this state or of the United States. Article II, Section 2, Clause I, of the Constitution of the United States, gives the president "power to grant reprieves and pardons for offenses against the United States."

Therefore, in our opinion, a person convicted of a felony under the laws of the United States cannot vote in the state of Montana until he has been pardoned by the president.

Very truly yours,

ALBERT J. GALEN,
Attorney General.