

Citizenship, Restoration To. Restoration, to Citizenship. Convict, Restoration Of. Alien Convict, Restoration to Rights.

A citizen of the United States convicted of a crime may be restored to citizenship under provisions of Sec. 9572, of Revised Codes.

An alien convict cannot be restored to citizenship nor claim the benefit of said Sec. 9572.

February 20, 1912.

Honorable Edwin L. Norris,
Governor,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your letter of the 19th inst., submitting the question:

May an alien who has been convicted of a felony and served a term in State Prison be restored to citizenship by the Governor?

With your communication you enclosed a letter addressed to you by Mr. Frank Adler, who states that he was born in 1887, that his father received his final naturalization papers in 1894, and that the writer, Mr. Adler, was convicted of assault and sentenced to serve two years in the State Prison dating from June 22, 1910; that he was released from said prison on the 24th day of December, 1911.

It appears from this statement of facts that Mr. Adler's father having taken out his final papers of naturalization while Mr. Adler was still a minor, that he is now a citizen of the United States and hence may be restored to citizenship under the provisions of Sec. 9572, Revised Codes.

Under the naturalization laws of the United States as they were in 1894 the naturalization of the father had the effect of naturalizing all minor children residing in the United States.

Boyd v. Thayer, 143 U. S. 135, 177.

U. S. v. Kellar, 13 Fed. 82, 84.

Sec. 2172 Rev. Stat. U. S.

However, a very different question is presented where the convict is an alien. Sec. 9572 Revised Codes, confers upon the Governor the power to restore to citizenship any person convicted, etc. The phrase "to restore" means placing in the condition he was before with reference to citizenship, hence, the party must have been a citizen before he can be restored to that state or condition.

The statute of Montana defines citizenship to be; (1) all persons born in this State and residing within it, except the children of tran-

sient aliens; (2) all persons born out of this State who are citizens of the United States and residing within this State.

Sec. 31 Revised Codes.

No one is permitted to exercise the elective franchise in the State of Montana unless, "he shall be a citizen of the United States."

Art. IX, Sec. 2, State Constitution.

Sec. 462, Revised Codes.

Sec. 8904, Rev. Codes, provides that a sentence of imprisonment in the State Prison suspends all the civil rights of the person **during such imprisonment**. Under the provisions of this latter section the person having served his term of imprisonment would be restored to all his civil rights by operation of law without any action whatsoever on the part of the Governor but Section 462 of the Revised Codes provides:

"No person convicted of a felony has the right to vote unless he has been pardoned."

Conviction of a felony in the State of Montana does not forfeit or nullify civil contracts, nor does it disqualify the convict from entering into civil contracts, but simply deprives him of the right to exercise the elective franchise and necessarily of the right to hold office or position of trust and honor. An alien does not possess these rights, hence, he cannot be restored to them either by operation of law or by any act of the overnor. It, therefore, necessarily follows that an alien convict cannot rightfully claim nor receive the benefits of Sec. 9572, Revised Codes. The fact of his conviction would be a matter for the consideration of the Court before whom he applied for naturalization and under the provisions of the 4th subdivision of Sec. 4 of the Act of Congress of June 29th, 1906, relating to naturalization of aliens.

Very truly yours,

ALBERT J. GALEN,
Attorney General.