

**Electors—Registry Certificate—Cancellation—Felonies—
Convictions—Federal Court—Voting.**

A conviction for felony in the federal court works a forfeiture of the right of franchise. County clerk is required to cancel registry card of any person convicted of a felony in the federal court upon the production of a certified copy of judgment of conviction.

Mr. Severt E. Wick,
County Clerk and Recorder,
Great Falls, Montana.

March 17, 1932.

My dear Mr. Wick:

You request an opinion as to whether it is your duty under subdivision 5 of section 570, R.C.M. 1921, to cancel the registry card of a person upon the production of a certified copy of a final judgment

of conviction of an elector of a felony when such certified copy discloses that such conviction was not had under the jurisdiction of and in the courts of this state but was a conviction under the federal laws and in the federal courts.

Section 540, R.C.M. 1921, provides the qualifications of a voter and provides that:

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

Section 706, R.C.M. 1921, provides grounds of challenge as follows:

"Any person offering to vote may be orally challenged by any elector of the county, upon either or all of the following grounds: * * *

"4. That he has been convicted of a felony and not pardoned."

Section 570, R.C.M. 1921, provides for cancellation of registry card as follows:

"The county clerk must cancel any registry card in the following cases: * * *

"5. Upon the production of a certified copy of final judgment of conviction of any elector of felony."

There is no United States law that I 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.

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 the above statutory sections carry out this provision.

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, 14 Ky. Law 273, 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 the 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. Rep. 385, 56 Miss 766, in construing a law of Mississippi which is similar to that of Montana, held the same as the Kentucky court.

See also: *Gandy vs. State*, 10 Neb. 243, 4 N.W. 1019.

Inasmuch as our constitution and statutes do not limit the conviction for felony to conviction in the state court, it is my opinion that it was intended to apply, and does apply, to convictions in the federal court for felony and that you are required under the provisions of subdivision 5 of section 570 to cancel the registry card of any person upon the production of certified copy of a final judgment of conviction of the elector of a felony in the federal court.

Very truly yours,

L. A. FOOT,

Attorney General.