

a felony other than the one for which he is serving sentence, either in this state or elsewhere;"

It is apparent from a reading of the above cited portion of the statute that the legislature by the insertion of the word "elsewhere" intended that conviction of a felony in courts of other jurisdictions was sufficient to satisfy the statute. That the federal courts were intended to be included is clear.

The question then arises as to what is sufficient in a federal conviction to meet the requirement of a felony as set out in sub-division (1) of Section 94-9818 above. It is a fundamental proposition that whether an offense is a felony or a misdemeanor depends on the laws of the jurisdiction in which the crime is committed.

Section 94-114, Revised Codes of Montana, 1947, defines a felony in the following language:

"A felony is a crime which is punishable with death or by imprisonment in the state prison."

Title 18, Section 1, U. S. C. A. classifies a felony as "any offense punishable by death or imprisonment for a term exceeding one year . . ."

A comparison of the Montana statute with the federal statutes indicates that under our statute whether a crime is classified as a felony depends upon the punishment actually imposed, whereas under the federal statute whether a crime is classified as a felony depends upon the sentence which may be imposed. (State exrel. Anderson vs. Fousek, 91 Mont. 448, 8 Pac. (2d) 791, 84 A. L. R. 303).

It would appear then that in order to determine whether a person convicted to one year in a federal institution has or has not been convicted of a felony as required by Section 94-9818 (supra) one has to look not to the punishment actually imposed but to the punishment which may have been imposed for the offense committed. Therefore it is my opinion that where a person has been convicted of a crime which is punishable for a term exceeding one year in a federal institution, such a person would be deemed a "loser" and would not be eligible for parole under Section 94-9818, (supra).

Very truly yours,
ARNOLD H. OLSEN
Attorney General

Opinion No. 63

Parole, Eligibility for—Montana State Prison—Prior Convictions

Held: Where a person has been convicted of a crime which is punishable for a term exceeding one year in a federal institution, such a person would be deemed a "loser" and would not be eligible for parole under Section 94-9819, Revised Codes of Montana, 1947.

February 6, 1952.

Mr. Lou Boedecker, Warden
Montana State Prison
Deer Lodge, Montana

Dear Mr. Boedecker:

You have requested my opinion as to whether a person sentenced to one year in a federal institution, and subsequently sentenced to the Montana State Prison should be considered a "loser" and thereby deemed ineligible for parole.

Section 94-9818, Revised Codes of Montana, 1947, provides in sub-division (1) as follows:

"That no convict shall be paroled who has been previously convicted of