

VOLUME NO. 37

OPINION NO. 125

CONSTITUTIONS - Prisoner voting rights; ELECTIONS - Inmate voting rights; CIVIL RIGHTS - Inmate voting rights; FELONS - Voting rights of institutionalized felons; PRISONERS - Voting rights; REVISED CODES OF MONTANA, 1947 - Sections 23-2701(2), 95-2227; 1972 MONTANA CONSTITUTION - Art. IV, section 2.

HELD: No person may vote in the State of Montana while serving a sentence in a penal institution resulting from conviction of a felony.

27 March 1978

James Masar, Esq.
Powell County Attorney
Powell County Courthouse
Deer Lodge, Montana 59722

Dear Mr. Masar:

You have requested my opinion concerning the following question:

May an inmate of the Montana State Prison vote in the State of Montana while serving a sentence resulting from a felony conviction.

The 1973 Legislative Assembly enacted two statutes which must be construed in answer to your question. During that session the Legislature enacted an amendment to section 23-2701(2), R.C.M. 1947, which now reads as follows:

(2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution. Sec. 1, ch.40. L 1973 (Amendatory language emphasized).

During the same session the Legislature passed the 1973 Criminal Code and the following new section dealing generally with the effect on rights of a criminal conviction. Section 95-2227, R.C.M. 1947, reads as follows:

(1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

Section 95-2227 is a general one dealing with the rights of the convicted. Section 23-2701(2), specifically deals with denial of the right to vote to convicted persons while they are serving a sentence in a penal institution.

Unless there is clearly and manifestly a conflict between the two Acts in question the Court will not declare that there is an implied repeal. State ex rel. Charette v. District Court, 107 Mont. 489, 86 P.2d 750 (1939).

When one act of the same session is of general application and the other a special enactment the presumption is strengthened that the special statute is to be construed an exception to the general. Board of Education v. Rogers, 278 N.Y. 66, 15 N.E.2d 401 (1938).

Each of the acts in question represents the intent of the 1973 Legislature and each should be qualified in construction to give validity and effect to the other.

The specific prohibition on voting by convicted felons under sentence contained in section 23-2701(2), R.C.M. 1947, is an exception to the more general language of section 95-2227, R.C.M. 1947. This construction of the two statutes likewise gives effect to the language of Article IV, section II of the Montana Constitution of 1972:

Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

THEREFORE, IT IS MY OPINION:

No person may vote in the State of Montana while serving a sentence in a penal institution resulting from conviction of a felony.

Very truly yours,

MIKE GREELY
Attorney General