

DE 89-12 - December 15, 1989

**Voting Rights of Individuals Convicted by Courts-Martial
Section 97.041(3)(B), F.S.**

To: Honorable Patricia M. Hollarn, Supervisor of Elections, Okaloosa County, Okaloosa County Courthouse, 100 East U.S. Highway 90, Crestview, Florida 32536

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the voting rights of individuals convicted by a court-martial. You are the Okaloosa County Supervisor of Elections and the Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapters 97-106, Florida Statutes.

You have asked for information relating to the following:

Whether a member of the military convicted by a court-martial is eligible to vote in the State of Florida?

There are three situations when a person will lose his civil rights in Florida resulting in the loss of eligibility to vote.

First, the Florida Constitution mandates that a felony conviction results in the loss of the right to vote and the right to hold office in Florida. Art. VI, Section 4, Fla. Const. The term "felony" means any criminal offense which if committed in this state is punishable under the laws of this state by death or imprisonment in the state penitentiary. Art. X, Section 10, Fla. Const. A person is imprisoned in the state penitentiary for each sentence, except an extended term, which exceeds 1 year. Section 775.08 (1), Fla. Stat. (1987).

Second, when conviction of a crime in another jurisdiction results in the loss of civil rights, a person loses his civil rights in Florida regardless of whether the crime is a felony in Florida. The classification of the crime in the jurisdiction where the crime was committed is irrelevant. In Re Florida Bd. of Bar Examiners, 350 So.2d 1072 (Fla. 1977). In this advisory opinion, the court advised the bar examiners that if an individual is deprived of his civil rights in another jurisdiction, then the individual should be treated as a person who has been convicted of a felony in Florida.

Third, the Attorney General of Florida has opined that a person convicted of a felony in another jurisdiction is a felon in Florida even if the other jurisdiction does not remove the person's civil rights. Op. Atty. Gen. Fla. 53- 11.

To determine whether a military member convicted by a court-martial is eligible to vote in the State of Florida, we must consider whether the offense if committed in this state is punishable under the laws

of this state by death or imprisonment in the state penitentiary.

It is our opinion that persons convicted by a court-martial of traditional criminal offenses such as murder, larceny, etc., which are punishable under the laws of this state, are considered felons for voter registration purposes. However, an uniquely military offense which is not punishable under the laws of this state has no effect on an individual's eligibility to vote in Florida as conviction by court-martial does not automatically terminate an individual's civil rights as does conviction of a felony.

If a person has lost his voting rights in one of the three situations listed above, he may register to vote upon restoration of his civil rights. Section 97.041(3)(b), Fla. Stat. (1987). A person convicted of a felony in another jurisdiction must apply to Florida for a restoration of these rights unless these rights were restored in the other jurisdiction in a manner that is as full and complete as is required to make a Florida felon eligible for restoration. Guiseppe Pizzeria v. Dept. of Business Regulation, Div. of Alcoholic Beverages and Tobacco, 472 So.2d 1331 (Fla. 3d DCA 1985). A person convicted of a felony in a jurisdiction which does not remove civil rights upon conviction must also apply to Florida for a restoration of civil rights before he is eligible to register to vote. Op. Atty. Gen. Fla. 53-60.

Consequently, if a member of the military is convicted by court-martial of an offense which is considered a felony under Florida law, it is irrelevant that the member's civil rights are not automatically terminated. To be eligible to vote, the member must apply to Florida for restoration of his civil rights. If a member of the military is convicted by court-martial of an offense which is an uniquely military offense which is not punishable under the laws of this state, the court-martial has no effect on an individual's civil rights.

SUMMARY

Persons convicted by a court-martial of a traditional criminal offense such as murder, larceny, etc., which if committed in this state is punishable under the laws of this state, or which is punishable by death or imprisonment in the state penitentiary are considered felons for purposes of voter registration. However, conviction by court-martial of an uniquely military offense which is not punishable under the laws of this state has no effect on an individual's eligibility to vote in Florida. If a member of the military is convicted by court- martial of an offense which is considered a felony under Florida law, the person must apply to Florida for restoration of his civil rights unless these rights were restored in another jurisdiction. If his rights were restored in another jurisdiction, the rights must have been restored in a manner that is as full and complete as is required to make a Florida felon eligible for restoration.