

Obsolete. See DE 95-02.

DE 86-02 - January 21, 1986

STATUTES - CONVICTED FELONS' VOTING RIGHTS; DUTIES OF SUPERVISORS OF ELECTIONS

To: Honorable Sherry Mills, Supervisor of Elections, Dixie County, Post Office Box 627, Cross City, Florida 32628

Prepared by: Division of Elections

This is a Division of Elections' Advisory Opinion authorized by Section 106.23(2), Florida Statutes, on substantially the following question:

What are the duties of a supervisor of elections under Section 98.301(3), Florida Statutes, when:

1. A person has been convicted and adjudicated guilty of a felony and placed on probation;
2. A person convicted and adjudicated guilty of a felony has adjudication withheld; and,
3. A person convicted and adjudicated guilty of a felony in another county and placed on probation there, nevertheless is registered to vote in the supervisor's county.

A conviction occurs when a verdict of guilty is returned and the judge by judgment adjudicates the guilt of the accused. Once these events occur, one is convicted regardless of whether the dependent is put on probation, the imposition of sentence is deferred or whether he is ever punished.

However, if an appeal of the conviction is timely taken, the supervisor of elections is not authorized to remove the names of persons who have been adjudicated guilty in a trial court, until that judgment has been finally affirmed by the appellate courts (or the time for such an appeal has expired). *Op. Atty. Gen. 077-42 (May 4, 1977)*. To this end, a person loses his right to vote when the time within which to appeal a conviction of a felony expires.

What is critical for the purpose of this opinion is the requirement that the trial judge adjudicate the guilt of the accused, for when adjudication is withheld, (as indicated in your second question) there is no conviction. *Ops. Atty. Gen. 073-174 (May 18, 1973); 071-284 (September 16, 1971)*.

Accordingly, a person convicted of a felony as described in paragraphs one and three above is not qualified to vote. Article VI, Section 4, Fla. Const. Under Section 98.301(2), Florida Statutes, each clerk of the circuit court is mandated to deliver at least

once each month a list containing specified information on each person convicted of a felony during the preceding calendar month. When the supervisor receives the list, the supervisor is required to remove from the registration books the name of any person listed who is convicted of a felony. Section 98.301(3), Florida Statutes.

In that the supervisor of elections derives authority regarding removal of names from the voter registration list from the information received from the clerk of circuit court, it is suggested that when a supervisor receives information from any other source regarding the qualifications of a previously-registered voter as the qualifications pertain to a felony conviction, the supervisor should verify that information through the local clerk's office and, once verified by the clerk, perform that purging duty in strict accordance with the statute.

SUMMARY

A person loses the right to vote when convicted and adjudicated guilty of a felony and the adjudication or judgment is not timely appealed and the trial judge does not withhold such adjudication. A person whose adjudication is withheld does not lose his right to vote. Upon receipt by a supervisor from a source other than the clerk of the circuit court of information regarding a registered voter's qualifications as a result of a felony conviction and adjudication, the supervisor should verify this information with the clerk of the circuit court, and once verified, the supervisor is to act in accordance with statute.