

DE 95-02 - April 17, 1995

Disqualification of Convicted Felons to Register or Vote

§§ 97.041(2) (b), 98.093(2), and 944.292(1), F.S.; Art. VI, § 4, Fla. Const.; and 42 U.S.C. § 1973gg (8) (g).

TO: The Honorable Kurt Browning, Supervisor of Elections, Pasco County, 38053 Live Oak Avenue, Room 212, Dade City, Florida 33525-3892

Prepared by: Division of Elections

This is in response to your request for an advisory opinion regarding the eligibility of convicted felons to register and vote. You are the Pasco County Supervisor of Elections, and, pursuant to Section 106.23 (2), Florida Statutes, the Division has authority to render this opinion to you.

You ask:

Does a conviction of a felony disqualify the defendant as a voter during the pendency of an appeal from such conviction?

Your question is answered in the affirmative.

The Division acknowledges that this question was previously addressed in the negative in Opinion 77-42 of the Attorney General of Florida. The Attorney General concluded that a convicted felon, adjudicated as such and sentenced, but with an appeal pending, was not disqualified from voting. The opinion reasoned that a felon does not lose his civil rights, including his right to register to vote, until his conviction becomes "final."

The practical result of the Attorney General's opinion has been to frustrate supervisors of elections from ever removing convicted felons from their voter registration lists. Section 98.093, Florida Statutes, provides, in pertinent part:

....

(2) Each clerk of the circuit court shall, at least once each month, deliver to each supervisor of elections a list stating the name, address, date of birth, race, and sex of each person convicted of a felony during the preceding calendar month who was a resident of that supervisor's county

(3) Upon receipt of information from the United States Attorney, listing persons convicted of a felony in federal court, the department shall immediately forward such information to the supervisor of elections for the county where the offender resides.

(4) Upon receipt of any such list, the supervisor shall remove from the registration books the name of any person listed who is . . . convicted of a felony

(5) Nothing in this section shall limit or restrict the supervisor in his duty to remove the names of such persons from the registration books after verification of information received from other sources.

Pursuant to Section 98.093 (2), Florida Statutes, supervisors of elections are periodically furnished with lists of persons convicted of a felony in state court who reside in their counties. However, the clerks of court do not notify supervisors of convictions after opportunities for appeal have expired, but rather when felony trial convictions occur. Therefore, since supervisors are not notified of "final" convictions, very few felons would ever be disqualified from registering or voting.

Furthermore, if civil rights are removed only after all appeals are exhausted, incarcerated felons could remain registered to vote and continue to vote by absentee ballot for years. Death row inmates, whose appeals are often not exhausted until moments before execution, would be legally entitled to register and vote for 10 to 15 years after their conviction at the trial court. It is doubtful that the State Constitution and the legislature intend such a result. See e.g., Johnson v. Presbyterian Homes of the Synod of Florida, Inc., 239 So. 2d 256 (Fla. 1970). (Statutes need not be interpreted so as to lead to an unreasonable or ridiculous conclusion.) Accord, City of Boca Raton v. Gidman, 440 So. 2d 1277 (Fla. 1983).

Another example of the need to depart from the Attorney General's previous interpretation is demonstrated in the area of federal felony convictions. Under the National Voter Registration Act of 1993, United States Attorneys are required to provide information regarding felony convictions to the chief election officials of the states.

(1) On the conviction of a person in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief election official designated under section 10 of the state of the person's residence.

. . . .

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief state election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

42 U.S.C. 1973gg(8)(g) (emphasis supplied).

It is important to note that states are not notified when federal felony convictions are "final," but only when "overturned." Therefore, under Attorney General Opinion 77-42, supervisors would be

powerless to disqualify convicted federal felons from registering or voting.

Because of these unintended and undesirable consequences, the Division believes that the question of disqualification for a felony conviction warrants revisiting.

The Florida Constitution provides that no person convicted of a felony is qualified to vote until the restoration of his civil rights. Art. VI, § 4, Fla. Const. Furthermore, the Election Code provides that no person is entitled to register or vote who has been convicted of any felony in any court of record and whose rights have not been restored. § 97.041(2) (b), Fla. Stat.

The key inquiry is to determine at what point an individual loses his or her civil rights, which would include the rights to register and vote. Section 944.292(1), Florida Statutes, provides:

Upon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution. (Emphasis supplied.)

The right to vote and to register to vote is one of the "civil rights" which may be suspended under this section. See § 97.041(2) (b), Fla. Stat.

There appear to be no cases which discuss the precise definition of the terms "convicted" and "conviction" in the context of Article VI, Section 4, of the Florida Constitution and Section 97.041 (2) (b), Florida Statutes. However, one recent case decided after AGO 77- 42, although one involving a very different factual situation, offers some insight into the meaning of the terms. Burkett v. State, 518 So. 2d 1363 (Fla. 1st DCA 1988).

In Burkett, the defendant argued that he should not be considered a convicted felon until his case was affirmed on appeal. The issue arose when the defendant was arrested for a firearms violation after he had been tried, convicted and sentenced on other felony charges, but before his conviction was affirmed on appeal. The court held: "[A] defendant is "convicted," for purposes of [statute prohibiting possession of a weapon by a person who has been convicted of a felony], when he is adjudicated guilty in the trial court, notwithstanding the fact that he has the right to contest the validity of the conviction by appeal or by other procedures." Id. at 1366 (emphasis supplied).

Although an argument possibly could be made that someone is not "convicted" until all appeals are exhausted, the more sound and logical approach was obtained in the Burkett decision. That is, when an individual is adjudicated guilty at the trial court level, he is "convicted" and such conviction would immediately result in suspension of his or her civil rights, including the right to register and to vote. This interpretation is also more consistent with constitutional and legislative intent. No "final" conviction limitation on the suspension of civil rights under Section 944.292(1), Florida Statutes, is provided in the constitution or in the legislation. If a felony conviction is later overturned on appeal or if civil rights are later restored, the individual would once again be entitled to register and vote.

SUMMARY

A conviction of a felony at a trial court immediately suspends the civil rights of the defendant with respect to registering to vote and voting. If the felony conviction is later overturned on appeal or if civil rights are restored, the defendant would once again be entitled to register and vote.