



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

February 19, 1971

Hon. Joe Resweber
County Attorney
Harris County
Houston, Texas

Opinion No. M-795

Re: Whether a person who
has been convicted of
a felony but whose
sentence has been pro-
bated may be issued a
voter registration
certificate.

Dear Mr. Resweber:

In your recent opinion request addressed to this office you ask the following question:

Whether a person who has been convicted of a felony but which sentence has been probated may be issued a voter registration certificate.

Article VI, Section 1, Constitution of Texas, provides in part as follows:

"The following classes of persons shall not be allowed to vote in this state, to wit:

" . . .

"Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make."

This constitutional provision was implemented by the Legislature in Article 5.01 of the Election Code of the State of Texas, which provides in pertinent part:

"The following classes of persons shall not be allowed to vote in this state:

" . . .

"4. All persons convicted of any felony except those restored to full citizenship and right of suffrage or pardoned."

Article 42.12 of the Code of Criminal Procedure of Texas deals with probation in felony cases and provides authority for the suspending of sentences and the placing on probation of defendants convicted of felonies under certain prescribed circumstances. Section 7 of Article 42.12 provides:

"Sec. 7. At any time, after the defendant has satisfactorily completed one third of the original probationary period or two years of probation, whichever is the lesser, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the court should the defendant again be convicted of any criminal offense."

It seems clear that the court in which the conviction was had must affirmatively take the action contemplated by Section 7 before a defendant is " . . . released from all disabilities resulting from the offense . . . of which he has been convicted . . ." (Emphasis ours) This includes the release from the disability of not being permitted to vote. See Attorney General's Opinion Nos. M-640 (1970) and V-278 (1947).

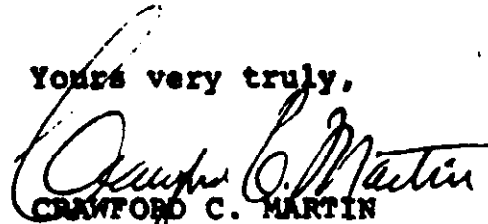
Accordingly, until the trial court sets aside the verdict or permits the withdrawal of the plea of guilty and dismisses the "accusation, complaint, information or indictment", the defendant cannot vote in Texas and a voter registration certificate should not be issued to him.

It is generally held in other states that a conviction of a felony is such a "disability" as would bring about a disqualification to vote. 149 A.L.R. 1075, and cited authorities.

S U M M A R Y

A voter registration certificate should not be issued to one convicted of a felony and placed on probation until the court in which the conviction was had has set aside the complaint, information or indictment as authorized by §7 of Article 42.12, Code of Criminal Procedure of Texas.

Yours very truly,


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