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INDIRECT LEGAL CONSEQUENCES OF A CONVICTION FOR A FELONY

Incarceration is the immediate and direct result of a sentence following a conviction of felony, unless the judge may impose a fine without imprisonment or suspend the sentence. Sociologists and penologists, pre-occupied with such problems as improving the living conditions in our penitentiaries and rehabilitating offenders, tend to disregard the fact that fines and imprisonment are only a part of the punishment that a convicted felon must undergo. He loses certain civil rights and faces other legal disabilities as well. The object of this paper is to explore these indirect consequences so far as Wyoming law is concerned.

The following Wyoming statutes are pertinent: "A person sentenced to the penitentiary for a felony . . . is incompetent to be an elector or juror, or to hold any office of honor, trust or profit within this state, unless he shall have received a pardon. . . ." ¹ ". . . In all cases of a conviction of an offense, the court shall render judgment against the defendant for the costs of prosecution."² The perpetrator of a criminal act may also be subject to a civil action arising out of the same offense, whereby the "party injured" may recover "full damages."³ The previous conviction of a felony or infamous crime in any state, territory or county, without knowledge of the other party (to the marriage) of such fact at the time of such marriage is a cause or ground for divorce.⁴

The principal statute for consideration is Section 9-104 of the Wyoming Compiled Statutes, 1945, first above quoted. It has never received judicial interpretation or construction in the courts of this state, therefore its impact must be measured by the interpretations given to comparable statutory provisions of other jurisdictions. In probing the significance of this Section many questions present themselves for determination. Representative among these, although not exhaustive, would be such questions as the following: What is the difference between the results under Section 9-104 and what is called "Civil Death?" Does the statute disqualify the former felon from becoming a state employee? Could he be the trustee of a trust or other fiduciary? Is there any way to remove the disqualification other than by pardon? Will parole remove the disability?

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1. Wyo. Comp. Stat. § 9-104 (1945). Other specific disqualifications of one convicted of a felony or infamous crimes are found in the Constitution and Statutes of Wyoming, which serve to supplement and elaborate the principal statute. Article 6, Section 6 of the Wyoming Constitution states that "persons convicted of infamous crimes, unless restored to civil rights are excluded from the elective franchise." Section 6-702 of the Wyoming Compiled Statutes states that one is not "competent to serve as executor who, at the time the will is admitted to probate, is: . . . 2. Convicted of infamous crime; . . ." Section 6-903 of our statutes provides that "no person is competent or entitled to serve as administrator or administratrix, who is . . . convicted of an infamous crime. . . ." Section 31-117, in defining those who shall not vote or hold office, includes "one who has been within Wyoming convicted of any felony, unless restored to civil rights by pardon. . . ."
 2. Wyo. Comp. Stat. § 9-105 (1945).
 3. Wyo. Comp. Stat. § 9-113 (1945).
 4. Wyo. Comp. Stat. § 3-5905 (1945).

DISSEMBLANCE BETWEEN SECTION 9-104 AND CIVIL DEATH STATUTE

When sentence was imposed on a convicted felon in the time of old Common Law he was placed by operation of law in a state of attainder.⁵ This produced forfeiture of estates, corruption of blood, and loss of all civil rights amounting to civil death.⁶ The law dealt with such a person as though he had actually died.

Attainder did not survive in colonial jurisprudence, although an early New York case⁷ stated dictum to the effect that the civil death statute of 1799 was only declaratory of the Common Law, and enacted for greater caution. Two years later an important case⁸ noted that forfeiture and corruption of blood had been dispensed with, and thereupon decreed that civil death could no longer work forfeiture. Since that case it is evident that, in absence of statute, civil death is not part of the American legal system. However, one-third of our jurisdictions have passed civil death statutes which generally follow the original New York Act of 1700.⁹ These civil death statutes are only operative when the sentence is for a life term. Apparent theory here is that since a sentence for a term of years suspends civil rights during that term, and a life term suspends them until death, nothing remains of a life convict's civil rights and death may well be his lot as far as these rights are concerned. Two questions of special interest are raised under civil death statutes: Which rights are lost and which are retained? How does such legislation encompass the widespread use of pardon and parole in modern penology?¹⁰

It is the inability to answer the above questions that has given rise to the type of statute that Wyoming has enacted. Civil Death statutes had become too great a burden and there developed a trend away from their strict results. The states then begin to enumerate the disqualifications that attach to a conviction of a felony. This specific type of statute usually provides that the rights to vote and to hold office are lost by conviction for a felony.¹¹ A convict may be disqualified to enjoy the right to sue in court,¹² although he can be sued by a creditor.¹³ He may forfeit the right to practice a profession,¹⁴ serve as a fiduciary,¹⁵ sit on a jury,¹⁶ act as a

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5. See *Avery v. Everett*, 110 N.Y. 317, 324, 18 N.E. 148, 150 (1888); 1 Chitty, Criminal Law *723.
 6. 1 Chitty, Criminal Law *725.
 7. See *Troup v. Wood*, 4 Johns. Ch. 228, 248 (N.Y. 1820).
 8. *Platner v. Sherwood*, 6 Johns. Ch. 118 N.Y. (1822).
 9. "A person sentenced to imprisonment for life is thereafter deemed civilly dead." N.Y. Penal Law 511 (Supp. 1956). Alabama, Alaska, Arizona, California, Hawaii, Idaho, Kansas, Maine, Minnesota, Missouri, Montana, North Dakota, Oklahoma, Oregon, Rhode Island, Utah, and Vermont have varying adaptations.
 10. Legislation, 50 Harv. L. Rev. 968, 970 (1937).
 11. E.g., Colo. Rev. Stat. § 39-10-17 (1953); Conn. Const., Art. VI, § 3; Neb. Rev. Stat. § 29-112 (1943); N.Y. Penal Law §§ 510, 510-a (Supp. 1956).
 12. *Lipschultz v. State*, 192 Misc. 70, 78 N.Y.S.2d 731 (1948); *Green v. State*, 251 App. Div. 108, 295 N.Y. 672 (1937).
 13. *Coffee v. Haynes*, 124 Cal. 561, 57 Pac. 482 (1899).
 14. See 5 Am. Jur., Attorneys at Law § 279 (1936); and 41 Am. Jur., Physicians and Surgeons § 55 (1942).
 15. See 21 Am. Jur., Executors and Administrators § 86 (1939); and 25 Am. Jur., Guardian and Ward § 57 (1940).

witness in litigation,¹⁷ act as a public accountant,¹⁸ conduct business as a private investigator or detective¹⁹ and engage in traffic in alcoholic beverages.²⁰ As is shown, the particular subjects of disqualification because of conviction of a felony take a wide range under the statutory and constitutional provisions enacted in the American jurisdictions.

Wyoming statutory development rejected the idea of complete civil death and settled upon the loss of three distinct civil privileges under Section 9-104; inability to be an "elector," "juror," "or hold any office of honor, trust, or profit within this state." It can be fairly well established what general definition would be applied to the terms "elector" and "juror" if they were subjected to judicial determination in a court of this state.²¹ As before mentioned, the statute under discussion has never been construed by Wyoming courts, which give rise to a conjectural opinion as to the meaning of the indefinite phrase, "office of honor, trust, and profit."²²

DESCRIBING THE "OFFICE OF HONOR, TRUST AND PROFIT"

In a Tennessee opinion²³ it was decided that a justice of the peace held an office of honor, trust or profit. Other decisions include these various positions as descriptive of such an office: Commissioner of Conservation,²⁴ Director of a state institution,²⁵ member of Board of Public Works,²⁶ School Director,²⁷ Postmaster²⁸ and County Treasurer.²⁹ Services held not to conform to the definition are grand juror,³⁰ chairman of executive committee of a political party,³¹ secretary of state dental board,³²

16. Ohio Rev. Code § 2961.01 (1953); see *Dodys v. State*, 73 Ga.App. 483, 486, 37 S.E.2d 173, 175 (1946).
17. At Common Law he was considered not to have the moral capacity to testify as a witness. 2 Wigmore, Evidence § 519 (3d ed. 1940). But this disability has generally been removed by statute. E.g., Ill. Rev. Stat. § 51-1 (1951), *Mulroy v. Prudential Ins. Co.*, 299 Ill.App. 598, 20 N.E.2d 613 (1939); *Hopt v. Utah*, 110 U.S. 574, 4 S.Ct. 202, 28 L.Ed. 262 (1884), with the qualification, however, that evidence of such conviction may be used to impeach the credibility of the witness. The Wyoming statutes do not disqualify witness because of felony convictions. Some states retain this disqualification in respect to convictions of perjury and subornation of perjury. E.g., Okla. Stat. § 21-505 (1951); Vt. Rev. Stat. § 1741 (1947).
18. N.Y. Gen. Bus. Law § 74 (Supp. 1956).
19. *Ibid.*
20. N.Y. Alco. Bev. Cont. Law §§ 126-1, 126-4 (1946); Mandatory only for a period of five consecutive years after release of the convicted felon from the sentence imposed, after which period the Parole Board can restore civil rights on clear evidence of good behavior. N.Y. Exec. Law § 242-3 (Supp. 1956).
21. 18 Am. Jur., Elections § 80 (1938); and 31 Am. Jur., Jury § 129 (1940).
22. The indefiniteness here would also attach to Section 31-117, Wyoming Compiled Statutes, 1945, since it provides that one convicted of a felony within Wyoming shall not vote or "hold office." Problems involved in defining "office" here will be similar to those met in giving content to the language in Section 9-104.
23. *Whitehead v. Clark*, 146 Tenn. 660, 244 S.W. 479, 482 (1922).
24. *State ex rel. Payne v. Irion*, 163 La. 1019, 113 So. 360, 361 (1927).
25. *Dickson v. People*, 17 Ill. 191, 193 (1855).
26. *Doll v. State*, 45 Ohio 445, 15 N.E. 293, 295 (1887).
27. *State v. Jones*, 143 Tenn. 575, 224 S.W. 1041, 1042 (1920).
28. *State ex rel. Wimberly v. Borham*, 173 La. 488, 137 So. 862, 864 (1931); *McGregor v. Balch*, 14 Vt. 428, 436, 39 Am.Dec. 231 (1842).
29. *State ex rel. Good v. Marsh*, 125 Neb. 125, 249 N.W. 295 (1933).
30. *State v. Graham*, 79 S.C. 116, 60 S.E. 431, 432 (1908).
31. *Walker v. Mobley*, 105 S.W. 61, 62 (Tex. 1907).
32. *Saint v. Irigon*, 165 La. 1035, 116 So. 549, 557 (1928).

deputy sheriff (since he is only an agent or employee of the sheriff),³³ jury commissioner elected to serve as a delegate to a constitutional convention³⁴ and an Assistant City Attorney created by ordinance.³⁵ *Doty v. State*³⁶ held that the term "profit" is included in the term "trust," as all offices of profit are necessarily offices of trust.

From what can be extracted from this varied authority it can be fairly well determined what answers would be given to the questions posed at the inception of this paper in regard to state employees. It can fairly be inferred from this authority that a convict in Wyoming would be disqualified from state employment which carries compensation.³⁷ Such person should also be judged as incompetent to assume the role of trustee or other fiduciary under the predominant idea contained in the New York law stating that a sentence of imprisonment suspends, during the term of the conviction, all private trusts, authority or powers of, or held by, the person sentenced.³⁸

REMOVAL OF DISABILITIES BY RELEASE AND PARDON

No attempt will be made in this paper to appraise the social stigma that attaches to the released convict. In theory at least, upon service of the sentence one is restored to the forfeited rights that the statutes enumerate. Section 9-104 of the Wyoming Compiled Statutes does more than theorize on this point. It specifically sets out the disqualifications, earlier discussed in detail, and then indicates that no legal disabilities remain after a pardon except "costs of conviction" and those to be later summarized.

Pardon will effect early release of the convict but does it completely absolve the prisoner of legal disabilities? The United States Supreme Court in *Ex Parte Garland*³⁹ said:

A pardon reaches both the punishment prescribed for the offense and the guilt of the offender . . . it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense . . . it removes the penalties and disabilities and restores to him all his civil rights.

It is now recognized that this far embracing language cannot be taken too literally,⁴⁰ since many instances appear where the law will not treat the pardoned prisoner as if he were innocent. In Wyoming the legal consequences of the conviction remaining after sentence has been served are at least the following: the fact that it gives grounds for divorce,⁴¹ that the

33. *Kemp v. Wilson*, 17 Ala.App. 224, 84 So. 636, 637 (1919).

34. *State v. Doyle*, 138 La. 350, 70 So. 322, 323 (1915).

35. *State v. Wilkinson*, 220 Ala. 172, 124 So. 211, 212 (1929).

36. 6 Blackford 529, 530 (Ind. 1843).

37. Notes 11, 23, 24, 25, 26, 27, and 29 supra, and cases cited.

38. Op. N. Y. Atty. Gen. (1915) 76; note 15 supra.

39. 4 Wall. 333, 380 (U.S. 1867).

40. See *People v. Biggs*, 9 Cal.2d 509, 511, 71 P.2d 214, 216 (1937); *Williston, Does a Pardon Blot Out Guilt?* 28 Harv. L. Rev. 647 (1915).

41. Note 4 supra.

crime committed may form the basis of a civil action,⁴² and that costs of prosecution⁴³ and conviction affix.⁴⁴

One court has observed that there is a basic difference in moral character between one whose crime has been pardoned and one who has always remained a good citizen.⁴⁵ And it has been put that although the pardon removes the strict legal punishment for the offense and restores lost civil rights, it cannot in and by itself reconstitute the good character of the convict.⁴⁶

REMOVAL OF DISABILITIES BY PAROLE

It is parole that offers the convict his best chance of freedom. The widespread use of parole in recent years has released large numbers of prisoners before their sentences have been served. However, parole does not improve the legal status of the parolee. The general view is that parole does not operate to wipe out the judgment of conviction, but merely suspends its operation by remitting the confinement for the time being, until the end of the term if the parole is not sooner revoked, or until an unconditional pardon is granted.⁴⁷ The sentence is not suspended;⁴⁸ all the legal consequences of the judgment remain, except that the parolee is allowed to leave the prison.⁴⁹ He actually is serving his time while at large. If he violates the terms of his parole his status is analogous to that of an escaped prisoner, who naturally must serve the unexpired portion of his sentence.⁵⁰ Although the pardon restores the convict's capacity to sue,⁵¹ a parole does not.⁵² It can be seen that parole offers few opportunities to expunge the disabilities of conviction as compared with pardon.

SUMMARY AND CONCLUSIONS

In Wyoming, conviction and sentence of felony produces the following important legal disabilities which attach to the person so convicted: 1. He cannot thereafter serve as an an elector. 2. He cannot thereafter serve as a juror. 3. He cannot thereafter hold any office of honor, trust or profit within Wyoming. 4. Judgment for costs of the prosecution is entered against him. 5. He may face the consequences of a civil action based on the same act which constituted the crime. 6. If he is married, his conviction constitutes ground for divorce. 7. His conviction counts as one step toward imprisonment for life as a habitual criminal. Parole will not remove these

42. Note 3 *supra*.

43. Note 2 *supra*.

44. Wyo. Comp. Stat. § 9-104 (1945).

45. See *State v. Hawkins*, 44 Ohio 98, 117, 5 N.E. 228, 237 (1886).

46. *Nelson v. Commonwealth*, 128 Ky. 779, 109 S.W. 337 (1908).

47. See *In re Sutton*, 50 Mont. 88, 94, 145 Pac. 6, 8 (1914).

48. *Crooks v. Sanders*, 123 S.C. 28, 115 S.E. 760 (1922); *Scott v. Chichester*, 107 Va. 933, 60 S.E. 95 (1908).

49. *Woodward v. Murdock*, 124 Ind. 439, 24 N.E. 1047 (1890).

50. N.Y. Correction Law § 218 (1944); *People v. Martin*, 266 App.Div. 48, 42 N.Y.S.2d 201 (1943); Kan. Gen. Stat. Ann. § 62-1528 (1949); *Groves v. Amrine*, 154 Kan. 407, 118 P.2d 542 (1941).

51. *White v. State*, 260 App.Div. 413, 23 N.Y.S.2d 526 (1940), *aff'd*, 285 N.Y. 728, 34 N.E.2d 896 (1941).

52. *Hayes v. State*, 50 N.Y.S.2d 492 (1944); *Lehrman v. State*, 176 Misc. 1022, 29 N.Y.S.2d 635 (1941).

disabilities but a pardon will most probably dissipate all but the disabilities numbered 4, 5, and 6.

The modern trend is toward rehabilitation and restoration of rights. Rehabilitation should begin where the punishment terminates, and it should be the duty of society as reflected in statutes and court decisions to give the criminal an opportunity to prove his ability and merit to become once again a law-abiding, self-supporting member of the community restored to the full rights and privileges of citizenship.

Statutes such as Wyoming's which seem to impose minimum disqualifications on the convicted one are in accord with the effort to keep pace with society's increased sense of social consciousness. It is to be hoped that when the Supreme Court of Wyoming is confronted with cases which make it necessary to construe these statutes, they will be construed in harmony with this spirit.

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THE CONSTITUTIONALITY OF CURFEW ORDINANCES

In recent years there has been a growing tendency for municipalities to enact curfew ordinances, apparently for the purpose of combatting juvenile delinquency. That crimes of lust and violence are usually committed after darkness is judicially known.¹ Surveys show that the great majority of the larger cities have enacted some type of curfew regulation.² For example, the State of California took a survey in 1950 by sending a questionnaire to police departments. The survey disclosed that nearly all cities in California possessed some sort of curfew law. Some states, such as Connecticut, are contemplating a curfew for teen-age drivers, relying upon statistics which show that teen-agers have the highest accident rate.³ Although few Wyoming cities have adopted curfew restrictions, the ordinance enacted by the City of Casper⁴ is typical of the majority of those used.

In Wyoming, as elsewhere, the legislature has the right to prescribe the powers and duties of municipalities. Upon examination of the statutes it

1. *Portland v. Goodwin*, 187 Ore. 409, 210 P.2d 577 (1949).

2. *Curfew Laws and Juvenile Delinquency*, National Probation and Parole Year Book (1950).

3. *Ibid.*

4. Revised Code of the City of Casper, c. 4, §§ 7-401, 7-402 (1951): "It shall be unlawful for any child under the age of sixteen years of age to loaf, loiter or play in, upon or about the streets and public thoroughfares of the City of Casper or for any such child to be upon any public street or thoroughfare after ten o'clock p.m., unless such child shall be traveling to his or her place of residence and having left his or her place of residence prior to ten o'clock p.m., or unless such child is accompanied by his or her parent or person having legal custody of said child." It may be noted that the ordinance does not provide exceptions for minors out due to an emergency, later hours on weekends, or for a written authorization signed by their parent or guardian.