

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date July 26, 1974

To Joseph T. Edgar, Secretary of State State Department
William F. Kearns, Jr., Commissioner Dept. Mental Health and Corrections

From Jon A. Lund, Attorney General Dept. Attorney General

Subject Qualifications for Electors and of Candidates for Office

SYLLABUS:

1. The provisions of Section 1-B of Public Law 782, 106th Legislature (1973) (21 M.R.S.A. § 247) purporting to prevent an incarcerated felon from voting in any election violates the Maine Constitution to the extent that it prevents such a felon from voting for the office of Governor, State Senator and State Representative and violates the United States Constitution to the extent that it prohibits such a felon from voting for the office of United States Senator.

2. The provision of the same statute purporting to prevent an incarcerated felon from being a candidate for federal, state and county offices violates the Maine Constitution to the extent that it prevents such a felon from being a candidate for the offices of Governor, State Senator and State Representative and violates the United States Constitution to the extent that it prevents such a felon from being a candidate for federal office.

FACTS:

In the Special Session of 1974, the Maine Legislature passed Public Law 782, Section 1-B of which adds a new section to the chapter of the State's election laws regulating the eligibility of voters. That section, 21 M.R.S.A. § 247, reads:

"A person who is convicted of a felony and committed to a jail or a penal or correctional institution may not vote at any election and may not be a candidate for any federal, state or county office prior to his discharge or to the granting of parole or while serving the unexpired portion of a sentence after parole has been revoked."

QUESTION AND ANSWER:

To what extent is this section in conflict with the Constitutions of Maine and the United States?

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To the extent that it purports to deny voting and candidacy for the offices of United States Senator, Governor, State Senator and State Representative and candidacy for the offices of President and Vice President of the United States and United States Representative.

REASONS:

I. Provision of Section 247 regulating voting.

Section 247 purports to prevent incarcerated felons from voting "in any election." This provision is in direct conflict with provisions of the United States and Maine Constitutions and is therefore unconstitutional to that extent.

Article II, Section 1 of the Maine Constitution provides:

"Every citizen of the United States of the age of eighteen years and upwards, ... having his or her residence established in this State, shall be an elector for Governor, Senators, and Representatives,"

This section constitutes "the exclusively exhaustive delineation of the qualifications of 'electors'" for the offices named therein. White v. Edgar, A.2d _____, _____ (Me. 1974) (Slip Opinion at 33). During the Maine Constitutional Convention of 1819-20, the framers of the Maine Constitution, in debating the original Article II, Section 1, considered a provision denying the franchise to "those who have been convicted of any infamous crime and not pardoned" but decided against the inclusion of any such restriction. Debates and Journal of the Constitutional Convention of the State of Maine, 1819-20, 123-25 (1894). It thus being the manifest intention of the framers not to prevent persons convicted of serious crimes, whether incarcerated or not, from voting for the offices of Governor, State Senator and State Representative, the Legislature, without constitutional amendment, may not intrude into the area. Therefore, Section 247, insofar as it relates to the capacity of incarcerated felons to vote for the offices of Governor, State Senator and State Representative, is unconstitutional.

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However, although the power to establish qualifications for electors for federal offices has been historically within the province of the states, the Maine Constitution (and Maine law in general) is silent as to the qualifications required of persons voting in Maine for the offices of President and Vice-President of the United States, and United States Senator and Representative.* Thus Section 247, so long as it does not violate any provision of the Federal Constitution, may validly restrict the right of incarcerated felons to vote in such elections. It is clear, moreover, that the provision does not violate the Federal Equal Protection Clause, the principal vehicle for invalidating state imposed restrictions on the franchise. In Richardson v. Ramirez, ___ U.S. ___ (1974), 42 U.S.L.W. 5016 (U.S., June 24, 1974), the Supreme Court held that a state may permanently deny the right to vote to persons "convicted of any infamous crime" without violating equal protection. This contemplates clearly that a state may constitutionally do less: deny the right to incarcerated felons only.

It would appear, however, that Section 247 does come in conflict with the Seventeenth Amendment to the United States Constitution which provides:

"...The electors in each State [for the office of United States Senator] shall have the qualifications requisite for electors of the most numerous branch of the State Legislatures."

* The terms "Senators and Representatives" found in Article II, Section I of the Maine Constitution, supra, cannot be thought to refer to both state and federal legislators, since the office of United States Senator was, at the time, elected by the State Legislature and not by the electorate at large, the qualifications of which the section purports to establish. In addition, the juxtaposition of the terms with office of Governor, coupled with the absence of any reference to the President and Vice-President (the electors for whom were popularly chosen at the time) seems to imply that Article II, Section 1 was concerned with state offices only.

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Since, as discussed, supra, incarcerated felons are qualified to vote for the office of State Representative, it would seem that they must likewise be entitled to vote for the office of United States Senator. Section 247 insofar as it relates to the capacity of incarcerated felons to vote for the office of United States Senator, is unconstitutional.

II. Provision of Section 247 regulating candidacy for office.

Section 247 purports to prevent an incarcerated felon from being "a candidate for any federal, state or county office." Like the provision on voting, this provision is also in direct conflict with provisions of the United States and Maine Constitutions and is unconstitutional to that extent.

The United States Constitution in various places sets forth the qualifications for all elective federal offices. See Article I, Section 2, clause 2 (United States Representative); Article I, Section 3, clause 3 (United States Senate); Article II, Section 1, clause 4 (President of the United States); and the Twelfth Amendment (Vice-President of the United States). These provisions have been consistently and unanimously held by state courts to establish the exclusive conditions for their respective offices. See, e.g. Applications of Ferguson, 57 N.Y.S. 2d 174 (Sup. Ct. 1968), in which the court held that the state may not render a convicted felon ineligible to run for the office of United States Senator, quoting the following passage from Cooley, General Principles of Constitutional Law 285 (3rd ed. 1898):

"The constitution and laws of the United States determine what shall be the qualifications for federal office, and state constitutions and laws can neither add nor take away from them."

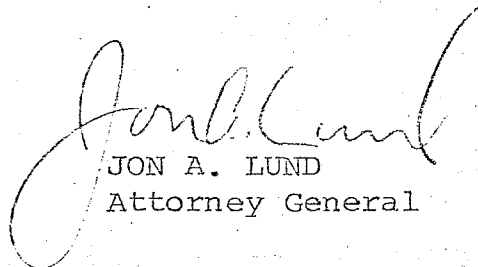
Thus, Section 247, insofar as it relates to the capacity of incarcerated felons to run for federal office, is unconstitutional.

The Maine Constitution likewise provides the qualifications for its state elective offices. See Article IV, Part 1, Section 4 (State Representative); Article IV, Part 2, Section 6 (State Senator); Article V, Part I, Section 4 (Governor). Like their federal counterparts, and like the provisions of Article II, Section 1 regarding the qualifications for electors, these provisions must be

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regarded as exclusive and not susceptible to modification by statute. Thus, Section 247, insofar as it relates to the capacity of incarcerated felons to run for the offices of Governor, State Senator or State Representative, is unconstitutional.

This means that the provision of Section 247 regarding candidacy for office is valid only with respect to county offices. One additional point should therefore be made. The term "county office" is defined in 21 M.R.S.A. § 1 (8) to include only certain enumerated offices. Incarcerated felons, would therefore be free to run for any office not so enumerated, including, for example, the municipal offices defined in Section 1 (19).


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