1984 S.C. Op. Atty. Gen. 222 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-94, 1984 WL 159901

Office of the Attorney General

State of South Carolina
Opinion No. 84-94
August 3, 1984

***1** James B. Ellisor
Executive Director
South Carolina Election Commission
Post Office Box 5987
Columbia, South Carolina 29250

Dear Mr. Ellisor:
By your letter of July 5, 1984, you have asked for the opinion of this Office on whether convictions in the Federal District Court of South Carolina for the offenses of conspiracy and extortion would constitute convictions of a felony under South Carolina law to disqualify one so convicted from being an elector under Section 7–5–120, Code of Laws of South Carolina (1976 & 1983 Cum.Supp.), thus disqualifying him from holding public office. Though our response is not completely free from doubt, it is the opinion of this Office that South Carolina state courts would follow the majority rule that a felony conviction under federal law would be a felony under Section 7–5–120, thus disenfranchising the one so convicted until his civil rights have been restored.

Article VI, Section 1 of the Constitution of South Carolina provides in part that '[n]o person shall be popularly elected to any office in this State or its political subdivisions unless he possesses the qualifications of an elector.' The qualifications of an elector are specified in Section 7–5–120 of the Code, which states in part (b) that '[p]ersons convicted of a felony or offenses against the election laws shall be disqualified from being registered or voting, unless such disqualification shall have been removed by service of the sentence, including probation and parole time unless sooner pardoned.' It thus becomes our task to interpret and effectuate the term 'felony' as we believe the General Assembly intended it to be interpreted and effectuated. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980).

A felony under federal law is defined to be '[a]ny offense punishable by death or imprisonment for a term exceeding one year' by 18 U.S.C. § 1(1). The individual in question was convicted under 18 U.S.C. § 1951, titled 'Interference with commerce by threats or violence,' commonly called 'extortion.' The maximum sentence under 18 U.S.C. § 1951 is a fine of not more than $10,000 or imprisonment of not more than twenty years, or both. The individual was also convicted of conspiracy to commit an offense against the United States, such as extortion, which is prohibited by 18 U.S.C. § 371; the maximum penalty is a fine of not more than $10,000 or imprisonment of not more than five years or both. A conviction under either one of these statutes would be considered a felony conviction, as the term 'felony' is defined by the United States Code.

Under state law, the crime of extortion would be covered by Section 16–17–640 of the Code, which provides the following:
Any person who verbally or by printing or writing:
(1) Accuses another of a crime or offense;

(2) Exposes or publishes any of another's personal or business acts, infirmities or failings; or

***2** (3) Compels any person to do any act, or to refrain from doing any lawful act, against his will;

With intent to extort money or any other thing of value from any person, or attempts or threatens to do any of such acts, with the intent to extort money or any other thing of value, shall be guilty of blackmail, and upon conviction shall be fined not more than five thousand dollars or imprisoned for not more than ten years, or both, in the discretion of the court. [1]

The statute in South Carolina which defines felony offenses, Section 16–1–10, does not list the offenses of Section 16–17–640 as felony offenses. Thus, the second portion of Section 16–1–10 must be considered:
The crimes referred to in the following sections . . . and all other criminal offenses punishable under the laws of this State which were felonies under the common law are hereby classified as and declared to be felonies.

At common law, extortion apparently was considered to be a misdemeanor, not a felony, See, McAninch, Criminal Law of South Carolina, 202 (1982); Perkins, Criminal Law, 367 (1969); 35 C.J.S. Extortion, § 1, and thus is considered by most authorities to be a misdemeanor under South Carolina law. Conspiracy is prohibited by Section 16–17–410 and is expressly declared to be a misdemeanor. Thus, if an individual should be convicted in state court of a violation of either Section 16–17–410 or –640, or both, a conviction would not cause a voter to be disenfranchised under Section 7–5–120 of the Code. Because the convictions occurred in federal court under federal law, however, further inquiry is necessary.

The general rule applied by courts in other jurisdictions where a similar situation has arisen is discussed in State ex rel. Chavez v. Evans, 79 N.M. 578, 446 P.2d 445 (1968). That court stated:
We are then faced with the problem of whether this conviction in the United States District Court makes this petitioner a person 'convicted of a felonious . . . crime' within the meaning of art VII, § 1, New Mexico Constitution. Although we recognize that the authorities are in no sense unanimous, we are convinced that the vast majority of the better-reasoned opinions are to the effect that the conviction of a felony in a foreign jurisdiction, such as the federal court in this instance, should be considered by the courts of another state as being the conviction of a felony within the constitutional prohibition. . . . This is so even in cases such as the instant one, where, although the charge in the federal court is a felony, it is urged that, under similar circumstances, the charge in New Mexico would be a misdemeanor. . . .

Although petitioner cites cases from other jurisdictions holding to the contrary, it is our considered judgment that the conviction of a felony in some other jurisdiction has the effect of casting a shadow on the individual involved and must be considered as within the constitutional prohibition denying the right of suffrage and the right to hold office to such a person. . . .

***3** 446 P.2d at 450. In reaching the same result construing provisions of the Missouri constitution in a similar situation, the court in State ex rel. Barrett v. Sartorious, 351 Mo. 1237, 175 S.W.2d 787 (1943), emphasized that such disenfranchisement was not merely additional punishment to the convicted felon but was intended to safeguard and preserve the purity of elections. Furthermore, to restrict the conviction of a felony only to felonies within that state would be to ignore the laws of sister states and of the United States and would be unrealistic. Merritt v. Jones, 533 S.W.2d 497 (Ark. 1976). See also Bruno v. Murdock, 406 S.W.2d 294 (Mo. 1966); Shepherd v. Trevino, 575 F.2d 1110, reh.den. 579 F.2d 643, cert. den. 439 U.S. 1129, 99 S.Ct. 1047, 59 L.Ed.2d 90 (1978); Flood v. Riggs, 80 Cal.App.3d 138, 145 Cal.Rptr. 573 (1978); Hayes v. Williams, 341 F.Supp. 182 (S.D.Tex. 1972); Application of People ex rel. Rollins, 196 Misc. 770, 93 N.Y.S.2d 147 (1949); Bailey v. Baronian, 120 R.I. 389, 394 A.2d 1338 (1978); Annot., 39 A.L.R.3d 290. Cf., Kitsap County Republican Central Committee v. Huff, 94 Wash.2d 802, 620 P.2d 986 (1980). But see Melton v. Oleson, 165 Mont. 520, 530 P.2d 466 (1974); Hughes v. Oklahoma State Election Board, 413 P.2d 543 (Okla. 1966).

By Amendment XXXIX § 1 to the state Constitution, Rhode Island disenfranchises voters upon 'final conviction of a felony.' Like South Carolina's statute, Rhode Island's constitution did not specify that felony convictions be confined to the state courts of Rhode Island. The court in Bailey v. Baronian, supra, applied the 'felony anywhere' or majority rule, stating that the rule is in conformity with the intent of the framers of Rhode Island's constitution and that it 'represents the sounder view.' 394 A.2d at 1343. The court gave other reasons for its broad interpretation and application of the amendment, which reasoning the

South Carolina courts could find persuasive. First, if the legislature had meant that felony convictions be limited to convictions within that state, the legislature would, or could, have said so. Additionally, such interpretation is in conformity with the general purposes and policies underlying the provision; the justification for such disenfranchisement is to preserve the purity of the ballot box, as a felon is assumed to use his franchise to debase the political process. The Rhode Island court also views disenfranchisement as a penalty to the felon. The opinion also discusses anomalous results which may be reached by applying the 'felony anywhere' or majority rule but decided to apply the rule regardless, stating that any anomalous results could be cured or ameliorated by the legislature.

Finally, we point out that Section 7–3–60 of the Code has been amended by Act No. 389, 1984 Acts and Joint Resolutions, to provide the following:
The clerks of the courts of common pleas and general sessions and every magistrate in the State must, annually on or before June first, make out under their respective hands and seals and report to the executive director a complete list as shown by the records of their respective offices for the preceding calendar year of all persons convicted in that year of felonies or crimes against the election laws, together with the social security. or identification numbers of these persons and the month of conviction. Where there is no person to be reported, the report shall so state. Any clerk of the court or magistrate who fails or neglects to make any report required by this section must forfeit and pay to the county in which he holds office the sum of fifty dollars for each failure or neglect to make the report.

***4** Failure to direct the federal clerks of court to so report those convicted of felonies in federal court would not alter the conclusion reached herein. It is fundamental that a state law could not be enacted directing a federal officer or employee to do certain acts.

In conclusion, it is our opinion that the courts of South Carolina would follow the majority rule as discussed above to find that one convicted of a felony in federal court, which offense would have been a misdemeanor under state law, would be disenfranchised under Section 7–5–120(b). Because this opinion cannot be free from doubt since our courts have not construed Section 7–5–120 or declared violations of 18 U.S.C. §§ 371 and 1951 to be felonies under state law for purposes of Section 7–5–120(b), it is suggested that a declaratory judgment be sought to clarify the matter, especially since the right to vote is a fundamental right. Op. Atty. Gen., May 13, 1984. [2]

We trust that we have satisfactorily resolved your questions. If additional information or clarification should be needed, please advise this Office.
Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

1 This Office offers no comment on whether the acts of the individual giving rise to prosecution under 18 U.S.C. §§ 371 and 1951 would be sufficient to prosecute him under Sections 16–17–410 and –640, or vice versa. That such acts would be sufficient will be presumed for the purposes of this opinion.

2 This opinion is consistent in reasoning with prior opinions of this Office. See Ops. Atty. Gen. dated October 28, 1976; October 16, 1979; April 26, 1983; and Op. No. 1912, dated October 1, 1965.

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