

1981 WL 158103 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 7, 1981

*1 Special Agent Edgar L. Colley
Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Room 503, Federal Building
334 Meeting Street
Charleston, South Carolina 29403

Dear Agent Colley:

You have requested an opinion from this Office pertaining to whether or not South Carolina law expressly forbids a person convicted of a felony, or an individual convicted of certain specified crimes, from holding a position as an elected law enforcement officer.

The office of sheriff is the only elected law enforcement official under the laws of South Carolina. [Article V, Section 20 of the Constitution of South Carolina](#) provides, in pertinent part, that:

There shall be elected in each county by the electors thereof a clerk of the circuit court, a sheriff and a coroner, and in each judicial circuit a solicitor shall be elected by the electors thereof. All of these officers shall serve for terms of four years until their successors are elected and qualify. The General Assembly shall provide by law for their duties and compensation.

[Section 23-11-10 of the Code of Laws of South Carolina \(1976\)](#), as amended, provides that 'there shall be an election for sheriff held in each county at the general election in each presidential election year.'

Being a constitutional office, the office of sheriff is not subject to the requirements of [§ 23-23-10, et seq., of the Code of Laws of South Carolina \(1976\)](#), as amended. [Gamble v. Clarendon County](#), 188 S.C. 250, 198 S.E. 857 (1938). The aforementioned statutory provision lists qualifications for all appointed or hired law enforcement officers, among which is the requirement that a candidate for law enforcement cannot have a felony conviction. [§ 23-23-50\(d\) of the Code of Laws of South Carolina \(1976\)](#), as amended. This does not mean, however, that any individual can hold the office of sheriff without fulfilling the constitutional requirements of that office.

The Constitution provides that every inhabitant of the State of South Carolina possessing the qualifications provided for in the Constitution, shall have an equal right to elect officers and be elected to fill public office; that every qualified elector shall be eligible to any office to be voted for; and that no person shall be elected or appointed to any office in this State unless he possesses the qualifications of an elector. [S.C. Constitution, Article I, § 5](#); Article II, §§ 3, 4, and 7; Article XVII, §§ 1 and 1A. A qualified elector has been defined to mean a registered elector, i.e., one possessing the qualifications of an elector and possessing a registration certificate. [State v. Graham](#), 79 S.C. 116, 60 S.E. 431 (1907); [Mew v. Charleston Railway Co.](#), 55 S.C. 90, 32 S.E. 828 (1899). Thus, in order for an individual to hold the office of sheriff, he must meet these requirements.

By virtue of [Article II, § 7 of the Constitution](#), the General Assembly was empowered to establish disqualifications for voting by reason of mental incompetence or conviction of serious crime. The Legislature was also empowered under this provision to provide for the removal of such disqualifications. In exercising this constitutional authority, the General Assembly enacted [§ 7-5-120 of the Code of Laws of South Carolina \(1976\)](#), as amended. Subsection 5(b) of this provision is pertinent to the issue of this opinion.

*2 Persons convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, larceny, murder, rape or crimes against the election laws, shall be disqualified from being registered or voting, unless such disqualification shall have been removed by pardon.

It is submitted that an individual who is convicted of any of these enumerated offenses and who has not been pardoned for any such offense is not a qualified elector under the Constitution of South Carolina, and thus is not eligible to hold public office.

It is therefore the opinion of this Office that any individual who is a qualified elector under the Constitution of South Carolina may hold the office of sheriff, and that an individual who has been convicted of any offense enumerated under [§§ 7-5-120\(5\)\(b\) of the Code of Laws of South Carolina \(1976\)](#), as amended, may yet hold the office of sheriff if such disqualification has been removed by pardon. It is further the opinion of this Office, that any individual who is not a qualified elector by virtue of a criminal conviction under [§§ 7-5-120\(5\)\(b\) of the Code](#), and has not received a pardon for such offense, shall not be eligible to hold the office of sheriff.

Sincerely,

Wayne G. Carter, Jr.
Staff Attorney

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