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April 14, 1989

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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Felon With Restored Rights on Juries?

Dear Ms. Kautz:

The Attorney General has asked me to respond to your letter of March 14, 1989, wherein you asked whether a convicted felon whose rights have been restored can sit on a jury and vote in elections. You cite the apparent conflict between Idaho Code § 18-310, which restores the full rights of citizenship upon service of a felony sentence, and Idaho Code § 19-2018, which lists "conviction of felony" as one of the "general causes of challenge" to jury service.

Article 6, § 3, of the Idaho Constitution provides in its entirety that:

No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, or who has, at any place, been convicted of a felony, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense.

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Clearly, a person who has not completed his term of imprisonment, probation or parole upon conviction of a felony is not qualified to vote or to serve as a juror. Upon final discharge, the right to vote, as a right of citizenship, is restored. At first blush, it appears that this principle would have equal application as to service on a jury. Further research shows that this is not the case.

Idaho law is clear that "a citizen shall not be excluded from jury service in this state on account of race, color, religion, sex, national origin, or economic status." Idaho Code § 2-203. However, the federal courts have repeatedly held that every state has the power to confine the selection of jurors to persons meeting specified qualifications of age, education and character. Carter v. Jury Commissioner of Greene County, 396 U.S. 320, 90 S.Ct. 518, 24 L.Ed.2d 549 (1970); Taylor v. Louisiana, 419 U.S. 522, 42 L.Ed.2d 690, 95 S.Ct. 692 (1975); Carmical v. Craven, 547 F.2d 1380 (1977); Davis v. Greer, 675 F.2d 141 (1982).

The Idaho Legislature has chosen to automatically disqualify only those persons who have "lost the right to vote because of a criminal conviction." Idaho Code § 2-209. In other words, those persons who have not had their civil rights restored upon conviction of a felony are automatically rejected. This automatic rejection does not apply to persons who have been convicted of a felony but who have had their civil rights restored.

However, the restoration of civil rights does not expunge the fact of the conviction. Idaho law is full of examples where a person convicted of a felony is treated differently from the average citizen, even though that felon's civil rights may have been restored. A witness may be impeached as a convicted felon under Idaho Rule of Evidence 609. A prior felony conviction may be taken into consideration at sentencing under Idaho Criminal Rule 32 and Idaho Code § 19-2520C, and in the setting of bail under Idaho Criminal Rule 46. A person may be prosecuted as a persistent violator if he has been previously convicted of two felonies under Idaho Code § 19-2514. As stated previously by the Attorney General, "a conviction for felony is a historical fact which does not waft away without an expungement." Attorney General's Opinion No. 86-16.

It has also been held that a person does not have a constitutional right to have ex-felons as part of a jury panel. Rubio v. Superior Court of San Joaquin Cty., 593 P.2d 595 (Cal. 1979), Van Arsdall v. State, 486 At.2d 1 (Del. 1984).

In recognition of a felon's demonstrated disrespect for the law, the legislature has provided the opportunity for a party to

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remove a felon from the jury for cause under Idaho Code § 19-2018. This challenge need not be interposed. If it is, the felon will be excused. If it is not, the felon will serve as a juror.

In summary, a person who has been convicted of a felony and who has had his civil rights restored may vote in an election. A person who has been convicted of a felony and has had his civil rights restored is eligible for jury service but will be removed if a challenge for cause is interposed by a party to the lawsuit.

Sincerely,

Michael Kane
Deputy Attorney General
Chief, Criminal Law Division