

## Opinion No. 54-6004

August 24, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Morris Abram Warden New Mexico State Penitentiary P. O. Box 1059 Santa Fe, New Mexico. Attention: Gilbert Sanchez Department of Parole

{\*466} In your letter of August 10, 1954, you request the opinion of this office with regard to the right of a convicted felon to apply for a Barber's or Real Estate Broker's license during the time that he is on parole. You also request our opinion with regard to similar applications to State Licensing Boards empowered to issue licenses for other professions or occupations.

In the early English Common Law, one who was convicted of a felony underwent what was termed "civil death." That is to say, such a person lost all of his civil and political rights, including the right to sue, the right to inherit property, the right to vote, etc. In the absence of statutes, however, the doctrine of civil death has never been applied fully in the United States.

"In the absence of statute, the doctrine of civil death has been generally denied in this country . . ." 18 C.J.S., Section 4, "Convicts", p. 103.

In the case of *Musgrave vs. McManus*, 24 N.M. 227, the Supreme Court of New Mexico, in determining the right of one convicted of a felony to maintain a legal action, said:

". . . In New Mexico there is no disability in a convict to institute a civil action, the only results of conviction of crime being set forth in our statute, section 1450, Code 1915, and the provisions of Section 1, Article 7 of the Constitution."

The section of the statute referred to by the Court has been codified in Section 41-101 of the 1941 Compilation, which provides:

"A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishment:

First. Death.

Second. Imprisonment.

Third. Fine.

Fourth. Removal from office; or

Fifth. Disqualification to hold and enjoy any office of honor, trust, or profit, under the laws of this state."

Thus, when a statute specifically provides that a part of the punishment for a conviction thereunder is the loss of the right to hold office, a convicted felon in this state loses that particular civil right. Such a statute is Section 41-801, N.M.S.A., 1941 Compilation, dealing with bribery. It is our opinion, however, that under such a statute, and similar statutes, a convicted felon is disqualified only from holding public office, and not from pursuing any private profession or occupation.

Section 1, Article 7 of the Constitution of New Mexico excludes from those who are qualified voters in this State, ". . . persons convicted of a felonious or infamous crime unless restored to political rights . . ." and Section 56-503, N.M.S.A., 1941 Compilation, makes it unlawful for any warden of a penitentiary, sheriff, or jailor to take to vote, or to permit to vote any prisoner under his custody.

The statutes and the constitutional provisions cited above constitute the only deprivations of civil or political rights suffered by one who is convicted of a felony in New Mexico.

We are of the opinion, therefore, that a convicted felon, while on parole, is under no disqualification {*\*467*} that would prevent him from applying for a license to practice barbering or to practice as a real estate broker, or for a license to practice any other trade, profession or occupation in this state.

You should be advised, however, with regard to the feasibility of such convicted felons applying for such licenses that the statutes prescribing the qualifications required for practicing the various trades, professions and occupations universally contain requirements with regard to good moral character on the part of applicants.

Thus, Section 51-3218, N.M.S.A., 1941 Compilation, provides, with respect to applications for licenses to practice as a real estate broker, "Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a real estate broker or real estate salesman in such manner as to safeguard the interests of the public and only after satisfactory proof has been presented to the board."

Similarly, Section 51-1608, N.M.S.A., 1941 Compilation, requires applicants for barber's licenses to furnish satisfactory proof of good moral character.

You should be advised further that Section 51-3221, N.M.S.A., 1941, gives the Real Estate License Board the power to refuse to issue a license or to suspend or revoke a license where the applicant therefor, or the licensee has been convicted in a court of competent jurisdiction "of this or any other state, of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud or other like offense or offenses . . ."

The commission of acts involving moral turpitude constitutes a ground under most of the statutes prescribing the powers of licensing boards to refuse or to revoke a license. Thus, Section 51-507, N.M.S.A., 1941 provides that a license to practice as a physician may be denied or revoked when the applicant therefor or the holder thereof has been guilty of immoral, dishonorable, or unprofessional conduct.

Section 18-117, N.M.S.A., 1941, provides that the "conviction of felony or misdemeanor involving moral turpitude in which case the record of conviction is conclusive . . ." is a ground for the disbarment of an attorney.

The State Licensing Boards have wide discretion in determining whether or not a particular applicant has good moral character, and such Boards would no doubt take into consideration an applicant's conviction of a felony in determining his good moral character.

Trusting that the foregoing will answer your questions satisfactorily, I am,

By: Henry A. Kiker, Jr.

Assist. Attorney General