

## Opinion No. 54-6013

September 8, 1954

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

**TO:** Honorable La Vor W. Burnham Assistant District Attorney Aztec, New Mexico

{\*476} Recently you requested the opinion of this office with regard to the right of a person who was convicted of the crime of rape in another state, and whose civil rights were restored in that state, following the service of his sentence, by operation of law, to vote and to hold public office in the State of New Mexico. You specify that the public office sought to be held by the person in question is that of Deputy Sheriff.

First, with respect to the right of the subject to vote in this state, Article 7, Section 1 of the Constitution of New Mexico excludes from those who are qualified to vote ". . . persons convicted of a felonious or infamous crime unless restored to political rights, . . ." In an opinion of this office, reported in the Opinions of the Attorney General for the year 1915-1915 at page 50, it is declared that the only way the political rights of one who has been convicted of a felonious or infamous crime in this state can be restored is by executive action.

Your request indicates that the subject's political rights were restored in the state in which he was convicted by operation of a statute, rather than by executive action. We are of the opinion, nevertheless, that the restoration of his rights in that state, by whatever lawful means prescribed in that state, would constitute the necessary restoration contemplated by Article 7, Section 1 of the New Mexico Constitution.

We believe that the operation of the statute of the foreign state which restored the subject's political rights is entitled to recognition in this state under the Full Faith and Credit Clause of the United States Constitution (Article 4, Section 1) which provides:

"Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state . . ."

With respect to the subject's right to hold public office in this state, we note that there is no provision in the New Mexico Constitution which deprives one convicted of a felony of the right to hold public office. Certain statutes of this state (i.e., § 41-801, N.M.S.A., 1941, dealing with bribery) make it unlawful for persons convicted of certain offenses to hold public office. Deprivation of the right to hold public office, however, is not a part of the penalty prescribed by the statutes of this state dealing with the crime of rape.

§ 15-3812, N.M.S.A., 1941, provides that no person shall be eligible to be appointed a deputy sheriff unless he is a legally qualified voter in New Mexico. We have already determined, however, that the subject's conviction in the foreign state constitutes no

bloc to his being legally qualified to vote in this state, his political rights having been restored in the foreign state.

For the foregoing reasons, it is our opinion that the person in question is under no disability on account of his previous conviction which would prevent him from being a qualified voter of this state, or from holding public office in this state.

By: Henry A. Kiker, Jr.

Assist. Attorney General